3060.

SUPREME COURT OF THE UNITED STATES.

No. 125.

MARGARET McREA AND BRACY McREA, ADMINISTRATORS OF JOHN D. BRACY, APPELLANTS,

v.

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, AT MOBILE.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF ARKANSAS.

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The United States of America, Eastern District of Arkansas.

Pleas before the Honorable, the United States Circuit Court of the United States for the Eastern District of Arkansas, as follows, to wit, on the Chancery side of said Court.

United States of America, Eastern District of Arkansas, *ss.*

To the Honorable, the Judges of the Circuit Court of the United States in and for the Eastern District of Arkansas, in Chancery sitting:

The Branch of the Bank of the State of Alabama, at Mobile, a body politic and corporate, created by the laws of said State of Alabama, domiciled and doing business therein, and a citizen of said State of Alabama, brings this her bill of complaint against Margaret McRea, who is a citizen of the State of Arkansas, and against Bracy McRea, as administrator of John D. Bracy, deceased, who is a citizen of the State of Arkansas.

And thereupon your oratrix complains and says:

That heretofore, and in the lifetime of said John D. Bracy, since then deceased, to wit, on the 9th day of December, 1843, at Clark County, in the State of Alabama, said John D. and one Maria Matherson and Melville Bracy (who are citizens of the State of Alabama, and are not impleaded in this behalf), made their certain promissory notes in writing, whereby they jointly and severally promised, twelve months after the date thereof, to pay Henry B. Holcomb (who then was and is a citizen of the State of Alabama), cashier, or bearer, nine thousand and sixty-five dollars, with interest from date, for value received, negotiable and payable at the Branch of the Bank of the State of Alabama, at Mobile: which said note was, on the day of the date thereof, indorsed, assigned, and delivered to, and received and discounted by your oratrix, for the accommodation of said John D., he being the principal debtor, and the other makers thereof his securities therein, by means of which premises your oratrix became the legal and equitable owner and holder thereof.

Your oratrix further represents that afterwards, to wit, on the 7th day of June, 1844, a certain deed of trust, called therein an indenture, was made and executed, bearing date the day and year last aforesaid, by and between said John D. Bracy, party of the first part, Billups Gayle, party of the second part, and said Maria Matherson, party of the third part thereto, all of the County of Clark and State of Alabama, in and by which said deed it was witnessed and declared, that said John D. Bracy, party of the first part thereto, for and in consideration of the sum of ten dollars, to him in hand paid by said party of the second part, the receipt whereof was thereby acknow-

ledged, and other good and lawful considerations thereinafter specified, has granted, bargained, sold, conveyed, and confirmed, and by those presents did bargain, sell, convey, and confirm unto the said Gayle, the said party of the second part thereto, the following described negro slaves, to wit.

Prince, aged about fifty; Christian, aged about forty-five; Fanny, aged about nineteen; Molly, aged about sixteen; Mary, aged about eighteen months; Prince, aged about four years; Frank, aged about two years; Peggy, aged about fifty years; Charlotte, aged about thirty years; Betty, aged about twenty-five years; Millison, aged about twenty-two years; Josey, aged about nineteen years; Jim, aged about seventeen years; Mingo, aged about seventeen years; Julia, aged about thirteen years; Betty, aged about sixty years; Morning, aged about sixty years; Tom, aged about fifty-five years; Joe, aged about twenty-one years; Primus, aged about sixty years; Love, aged about fifty-five years; Sam, aged about fifty-five years; Lydia, aged about fifty years; Nat, aged about thirty years; Delia, aged about twenty-five years; Nora, aged about fifteen years; Peggy, aged about thirteen years; Cain, aged about forty years; January, aged about six years; Ransom, aged about four years; Elsey, aged about thirty-five years; Chaney, aged about thirteen years; Anna, aged about eleven years; also two plantation wagons; six mules, three horses, and sixty head of hogs, together with all and singular, the interest, right, claim, and issue thereupon; and it was therein and thereby further declared, that said deed was made to said party of the second part in trust, for the following purposes, to wit: as a security and indemnity to the said Maria Matherson, the party of the third part, who was security of the said John D., on two promissory notes, to wit: the said note, hereinbefore mentioned and described, and so designated, held by your oratrix, and another for the sum $2574 50, dated April 6th, 1844, made by J. Danington, John D. Bracy, and said Maria, and payable on the first December next, after the date thereof, to the president, directors, and company of the Bank of Mobile. Then it was further stipulated and declared in and by said deed, that if said John D. Bracy should well and truly pay, or cause to be paid, the two above described notes at maturity, then those presents, and all therein contained, should be null and void; but in case of the non-payment of the said notes as aforesaid, then the said deed was to remain in full force and effect, and the said Gayle, the said party of the second part, at the request of the said Maria Matherson, was thereby fully authorized and empowered to take the said negro slaves, wagons, mules, horses, and hogs, into his possession, and after giving thirty days' previous notice of the sale, at a sufficient number of public places in the County of Clark, to sell all, or so much of said negroes, wagons, mules, horses, and hogs, as would be sufficient fully to pay off and discharge the said notes. The said to be held, and to take place, at some public place

in said County of Clark, between the hours of 12 A.M. and 2 o'clock P.M.; and said party of the second part was thereby authorized and empowered, after said sale, sufficient bills of sale to make to the purchaser, and from the proceeds of the said sale, after the expenses were defrayed, to pay off and discharge all of the said notes, and the surplus, if any remained, to pay over to the said John D. Bracy. Which said deed was assigned, sealed, and executed by the parties thereto, to wit, by the said John D. Bracy, Billups Gayle, and Maria Matherson, on the day of the date thereof, in the presence of three subscribing witnesses; and the same was, on the same day, duly, and in due form of law, acknowledged by the said parties before a justice of the peace, in and for said County of Clark, and was filed for record on the 10th, and duly recorded on the 14th day of June, 1844, in the office of the Clerk of the County Court of said County of Clark—the said parties being residents, and the property specified in said deed, then being within said County of Clark—and that being the office in which, by the laws of the said State of Alabama, said deed was authorized and required to be recorded: a true copy of which said deed (the original not being in the possession, or under the control of your oratrix, and cannot be produced), is herewith exhibited, marked A, No. 1, and prayed to be taken as part of this bill; by means of which said premises, and by force of the laws of said State of Alabama, the said promissory note, so discounted and held by your oratrix, became and was constituted and made a valid lien and charge upon the said property, in the said deed specified, as against all persons whomsoever.

Your oratrix further represents, that after the maturity of the note so held by her, the same being wholly in arrear and unpaid, she instituted suit thereon against all the makers thereof, in the Circuit Court of the County of Mobile, in the said State of Alabama, and the process having been duly served on all the said parties, and proceedings were had therein; that afterwards, to wit, on the 25th day of November, 1845, your oratrix, by the consideration and judgment of the said Circuit Court of Mobile County, recovered against the said John D. Bracy, Maria Matherson, and Melville Bracy, the sum of ten thousand four hundred and eighty-seven $\frac{20}{100}$ dollars ($10,487\frac{20}{100}$), the amount of the said note, and the interest and damages thereon, together with costs; which said judgment still remains in full force, and your oratrix has not, as yet, had execution or satisfaction thereof, and that no payments have been made thereon, except the sum of $1397\frac{50}{100}$, paid on the 17th of June, 1848, and the sum of $1401\frac{80}{100}$, paid on the 1st of May, 1849; and your oratrix avers that the residue, after deducting the said payments, is justly due to your oratrix, and in every part unpaid, and is a valid lien, charge, and incumbrance upon the said property, mentioned in said deed of trust.

Your oratrix further states, that shortly after the rendition of said

judgment, said John D. Bracy, for the purpose of defrauding your oratrix, and avoiding the payment of the said debt, clandestinely and fraudulently absconded from the State of Alabama, removing and taking with him all his property, including that specified in said deed, and that neither your oratrix or said trustee, or the securities, or other creditors of said John D. in Alabama, knew or had any information (although diligent inquiry for that purpose was made), as to where said Bracy had removed; or what disposition he had made of said property, until within a year past, when it was ascertained that after leaving Alabama, he remained for some time in the States of Mississippi and Louisiana, and then, in or about the year 1849, removed to and settled in White County, in this State, bringing said property with him, where he resided until on or about the day of 1852, when he departed this life intestate. That shortly after his death, to wit, on the day of 1852, administration upon his estate was, in due form of law, by the proper authority, in said County of White, granted and committed unto said Bracy McRea, a nephew of said John D., deceased, and son of said defendant, Margaret McRea, who has from thence continued to be, and still is, such administrator; that at the time of his death, and for several years prior thereto, said John D. Bracy, and said Margaret McRea, who was his sister (said John D. being unmarried and without children), resided together in the same family; and since his death, it is pretended by said Margaret McRea that he had sold and conveyed the said property, mentioned in said deed of trust, to her, and she has ever since held, and still holds, the same as her own property; and the said administrator, combining and confederating with her, has failed and refused to take possession of said property, or treat or recognize the same as a part of the estate of the said John D. Bracy, deceased; and, in consequence thereof, the assets inventoried and reported by said administrator, do not exceed the sum of $500; that said pretended sale was kept secret, and said John D. had the use and control, and was the ostensible owner of said slaves until his death. Your oratrix further represents and charges, that all the negro slaves and other property mentioned in said deed of trust, together the issue and increase of said female slaves, born since the execution of said deed (the names, ages, number, description, and value of which increase are unknown to your oratrix), are now, and ever since the death of said John D. have been in the possession of said defendant, Margaret McRea. That if said property was conveyed to her as is pretended (which your oratrix denies), it was so conveyed with intent and for the purpose of hindering, delaying, and defrauding the creditors of said John D.: that said Margaret was not able, nor had the means, nor did not, in fact, pay any adequate consideration for said property; and that she well knew, and had been informed, or had some reason to suspect or believe, at the time she obtained said property, that said John D.

was largely indebted in Alabama; and that said property was bound by liens and incumbrances in that State; and that he had removed from said State for the purpose of preventing his property from being seized for the payment and satisfaction of his debts.

Your oratrix further states and insists, that even if said pretended sale and conveyance to said Margaret was not voluntary and fraudulent, as hereinbefore charged, the said deed of trust constitutes and is a valid and subsisting lien and charge upon said property, in the hands of said Margaret, as against her and all other persons, for the balance due on the said judgment, so recovered by your oratrix on said note; and that your oratrix is, in equity, entitled to be subrogated to the rights of the said Maria Matherson, under said deed of trust, and to have the benefit thereof for the payment of the said debt.

Your oratrix avers that the negro slaves now in the possession of said Margaret, or some of them, are the same slaves, and the issue and increase of the same slaves, held, owned, and possessed, by said John D. Bracy, in the State of Alabama, at the date of said deed of trust, and which are mentioned and described, or intended to be mentioned and described in and conveyed by said deed, and are the same slaves brought by said John D. Bracy from said State of Alabama. Your oratrix is not informed and cannot state the exact value of each of said slaves, but charges that they are of the aggregate value of at least $20,000; and that their hire and services are, and have been, ever since said Margaret has had possession thereof, of the value of $2000 per annum.

Your oratrix further states, that said Billups Gayle, Maria Matherson, J. Donington, and the President, Directors, and Company, of the Bank of Mobile, mentioned in said deed of trust, are all citizens of the State of Alabama, and not within the jurisdiction or amenable to the process of this Court; that said Gale, the trustee named in said deed, has failed and refused, and cannot be prevailed upon, to come to this State, for the purpose of reclaiming said property, and executing the said trust; that the securities of the said John D. Bracy are insolvent, and that unless she can have the remedy hereby sought, your oratrix will be deprived of all means of collecting the said debt; and your oratrix has caused her said claim to be exhibited to said administrator, duly authenticated, for allowance. A true copy of which claim, so exhibited, is herewith filed, marked B, No. 1, and prayed to be taken as part hereof.

Your oratrix charges that both of said defendants were in a manner raised with said slaves, and know full well that the slaves now in possession and claimed by said Margaret, are the identical slaves, and the issue of the same slaves, held and claimed by said John D. Bracy, in the State of Arkansas.

And your oratrix further represents, that notwithstanding the penalty affixed by the statute to such offence, from the fact that said

slaves have been so often run and removed for the purpose of avoiding the payment of said debt, your oratrix has good reason to fear, and does apprehend and fear, that said slaves will be removed out of this State, unless restrained and prevented by order of this Court.

To the end therefore that said defendants may, if they can, show why your oratrix should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according to their best and utmost of their several and respective knowledge, remembrance, and belief, full, true, direct, and perfect answer make, to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is to say:

1. Whether such deed of trust was not executed, acknowledged, and recorded as above stated.

2. Whether the said parties to said deed were not, at the date of said deed, residents of, and the said property mentioned in said deed, or some part thereof, and what portion, was not at that time in said County of Clark in the State of Alabama?

3. Whether your oratrix did not recover such judgment as above set forth, and whether the same was not founded upon and for the amount of the promissory note specified in and secured by said deed?

4. Whether said John D. Bracy did not, and when, remove from the State of Alabama, taking with him all of his property, including that specified in said deed, and if not, what were the names, ages, value, and description, and value of the slaves so removed by him from that State? where did he remove to when he left said State; and whether he did not have the slaves, described in said deed, in his possession in the States of Mississippi and Louisiana, or in one of those States? If not, what were the names, ages, and description of the slaves held by him, in those States, or elsewhere, at any time after he removed from said State of Alabama?

5. Where did said John D. reside, after he left Alabama, and before he removed to this State?

6. When did said John D. remove to, and settle in this State, and what were the respective names, ages, and description of the slaves brought by him, or which were in his possession in this State; and what disposition, if any, did he make of them, and how, if at all, did he dispose of the negroes removed by him from Alabama? If he sold or conveyed them, when, where, and to whom?

7. Whether the negro slaves mentioned and described in said deed of trust, or those once held and possessed by said John D., in Alabama, or those removed by him from that State, or once held and owned by him at some other time or place, or some of them, as the issue and increase of some such slaves, are not now in the possession and claimed by said defendant, Margaret McRea? If so, when, where, how, for what consideration, by what means, and under what

circumstances, did she obtain possession of, or title to such slaves, and what is the name, age, and value of each of them at this time?

9. What is the name, age, description, and probable value of each negro-slave now in the possession or under the control of said Margaret? and which, if any of them, were owned or possessed at any time, and when, by said John D., or were derived or obtained from him?

9. What is the name, age, description, and probable value of the children and issue now living, born of the female slaves named and described in said deed since the 7th day of June, 1844, the date of the said deed?

10. At what place or places did said John D. Bracy reside or remain after he removed from Alabama, and before he settled in Arkansas, and how long did he reside or remain at each of such places?

11. When did said John D. remove to and settle in Arkansas, how long did he reside there, and when and where did he die?

12. Whether said John D. did not depart this life intestate, and whether administration upon his estate was not, and when, by the proper authority in said County of White, granted and committed to said defendant, Bracy McRea, a son of said Margaret, and whether he has not from and hence continued to be, and still is, such administrator?

13. Whether said defendant, Margaret, was not a sister of said John D., and whether they did not at the time of his death, and for several years, and for what length of time prior thereto, or at some other time, and when, where, and how long, reside together in the same family?

14. What is the particular description, nature, and probable value of the property inventoried and reported by said administrator as belonging to the estate of said John D.?

15. Whether said Margaret did not at the time she obtained said property, well know, or have some reason to suspect or believe, that said John D. was largely indebted in said State of Alabama, or that the same, or some part thereof, had been conveyed, and was incumbered by the deed above mentioned, or bound by some lien, or that said property had been removed from Alabama for the purpose of preventing the same from being seized for the payment of the debts of said John D.?

16. How long have said defendants been acquainted with or known said negro-slaves, and who owned or had possession of them when they first knew them?

And by final decree of this Court in the premises that your oratrix may be subrogated to the rights of said Maria Matherson, and have the benefit of said deed of trust; that an account may be taken and stated in respect of the debts specified in said deed, and the amount so found made a charge upon said property; that the trustee named

in said deed be removed, and a new trustee, or some other proper person or officer appointed, with power and authority to execute the said trust, and to take possession of said property, and sell so much thereof as may be necessary for the payment of the said debt, and apply the proceeds to the payment thereof.

Or, if the lien of said deed of trust cannot be enforced, your oratrix, on behalf of herself and all other creditors, or persons having claims against the estate of said John D. Bracy, deceased, prays that the said pretended sale and transfer of said property to said Margaret McRea may be declared to be fraudulent and void as against creditors, and be cancelled and annulled, and said property declared and be administered as assets of the said estate of said John D. Bracy, deceased, and the proceeds thereof distributed, applied, and paid according to the several respective rights and priorities of said creditors.

And that an account may be taken of the value of each of said slaves, and of their services and hire since the same have been in the possession of said Margaret McRea, and that she may be required to pay the amount so found.

And in the meantime, that a receiver may be appointed to take charge of said property, and hold the same subject to the order of this Court touching the same; and that a writ of assistance and of sequestration, as well as a writ of injunction, and all other necessary and needful writs, may be issued, and orders made and directions given by the Court in the premises, for the purpose of preventing said property from being removed out of this State, and obtaining and enforcing the relief hereby sought.

And that your oratrix may have such other and further relief in the premises as the nature and circumstances of the case may require, and unto equity pertains. And your oratrix prays process of subpœna against said defendant, Bracy McRea, as administrator of John D. Bracy, deceased, and said Margaret McRea, commanding them to answer the matters aforesaid, according to the rules of this Court, &c., and she will ever pray, &c.

J. M. CURRAN,
Solicitor for Complainant.

Note. Each of said defendants are required to answer the interrogatories above propounded, numbered respectively, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15.

CURRAN,
Solicitor for Complainants.

I, J. M. Curran, acknowledge myself bound for all costs for which the plaintiff or complainant may be liable in this suit.

J. M. CURRAN.

Filed 9th April, 1853, and subpœna same day.

WM. FIELD,
Clerk
By J. A. HUTCHINGS,
Deputy Clerk.

United States of America, Eastern District of Arkansas.

The President of the United States, to the Marshal of the Eastern District of Arkansas, greeting:

You are commanded to summon Bracy McRea, as administrator of John D. Bracy, deceased, and Margaret McRea, if they be found within your bailiwick, to appear before the Judges of our Circuit Court of the United States in and for the Eastern District of Arkansas, at the court-house in the City of Little Rock, sitting on the chancery side of said Court, on the first Monday of May next, being the second day of the said month, then and there to answer a bill of complaint exhibited in said Court against them by the Branch of the Bank of the State of Alabama, at Mobile, and have you then and there this writ.

In testimony whereof Roger B. Taney, Esq., Chief Justice of the Supreme Court, has caused the seal of the said Circuit Court to be hereunto affixed, this 9th day of April, A. D. 1853, and in the year of our Independence.

WM. FIELD,
Clerk.
By J. A. HUTCHINGS,
Deputy Clerk.

Mem. The defendants are to enter their appearance in this suit in the Clerk's Office, on or before the day at which this writ is returnable, otherwise the bill may be taken pro confesso.

WM. FIELD,
Clerk.
By J. A. HUTCHINGS,
Deputy Clerk.

Came to hand at Little Rock, April 9th, 1853, at 5 o'clock, P. M.

L. CHASE,
United States Marshal, Eastern District of Arkansas.

United States of America, Eastern District of Arkansas.

I certify that I executed the within writ, by reading the same in the presence and hearing of the within-named Bracy McRea, and also by leaving a true copy *with* thereof with him, on the 12th day of April, 1853, at White County, within said Eastern District of Arkansas; and I also served the within writ on Margaret McRea, by leaving a true copy thereof with her at her place of residence in

White County, and within said Eastern District of Arkansas, on the 12th day of April, 1853.

LUTHER CHASE,
United States Marshal, Eastern District of Arkansas.
By ——— BRYANT,
Deputy Marshal.

Fees:

Two services, . .	$4 00
Two copies, . . .	1 00
70 miles' travel, . .	4 20
	$9 20

Filed 16th April, 1853.

WM. FIELD,
Clerk.

In the Circuit Court of the United for the Eastern District of Arkansas, in Chancery.

The separate answer of Margaret McRae, one of the defendants, to the Bill of Complaint of the Branch of the Bank of the State of Alabama, at Mobile, complainant.

This defendant now, and at all times hereafter, saving and reserving unto herself, all benefit and advantage of exception, which can or may be had or taken, to the many errors, uncertainties, and other imperfections, in the said complaint said Bill of Complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is or are material for her to make answer unto, this defendant answering says, that, in response to said first interrogatory of said bill, and the allegations on which the same is founded, says, that she did not, nor does she now know anything about the execution, acknowledgment, or record of the said deed of trust mentioned, except as hereinafter stated, and what she has learned from the said Bill of Complaint, and except what Billups Gale, the trustee named in said deed of trust, told her a few days before her brother, the said John D. Bracy, left the State of Alabama with a part of his slaves; and all she heard or knew about it then was, that the said Gale told her, that he was then on his way to release from a deed of trust the part of the slaves which the said John D. wanted to carry away with him; and that he was going to leave the State of Alabama, and could not leave with his slaves until they were released from the deed of trust; and Gale told this respondent, at the same time, that the attorney of the said Branch Bank had told him, Gale, that the said John D. Bracy had a perfect right to sell and dispose of the said slaves which he was about to carry away with him; and some time after the said John D. Bracy had left the State of Alabama with such slaves, the said Gale told

this respondent, that he had released such slaves from the deed of trust, and that the attorney for said Branch Bank had told him that he knew that the said John D. was in the State of Mississippi, and that he was there among his relations, and that he had a perfect right to sell the said slaves which he had carried away with him, he, the said attorney, having heard that he had sold them to a relation in the State of Mississippi.

To the second interrogatory, and the allegations on which it is founded, answering, she says, that the persons named in said Bill of Complaint, as parties to said deed of trust at the alleged date of such deed, and the said property mentioned therein, she admits was in the said County of Clark, in said State of Alabama, as far as she has any knowledge of such property, which she supposes was then there on the plantation of the said John D.

To the third interrogatory, and the allegations on which it is based, she, answering, says, that from rumor in the State of Alabama, she had heard of such a judgment, but knowing about it of her own knowledge, she requires the said plaintiff to make full proof thereof.

To the said interrogatory, and the allegations on which it is based, answering, she says, to the best of her knowledge, remembrance, and belief, that when the said John D. removed from the State of Alabama he took with him only about half of his slaves charged to be embraced in said deed of trust, and left the others, which she believes were sold under said deed of trust, except three, which ran away and were afterwards sold for him at Montgomery, as she heard, in the State of Alabama; and those which he took with him, she was informed, were released from the deed of trust, as above stated herein. The deed of trust, she thinks, embraced all the slaves then owned by the said John D. Those he took away with him, she thinks, were as follows, to wit: Jim, Josey, Mingo, Christian, Molly, Fanny, and her child, that died afterwards, Millison, Billy, Juliet, Peggy, Prince, and several children, which she cannot now fully specify and distinguish from other children born afterwards; and that she cannot now undertake to state, with any certainty, what was the value of such slaves when removed from the State of Alabama, but she thinks slaves were then selling low in Alabama. When the said John D. removed from Alabama he removed to the State of Mississippi; and the slaves which he took away with him from Alabama, mentioned as in said deed of trust, he also had in his possession in the States of Mississippi and Louisiana, except Fanny and child, Millison, and Christian, who died after he left Alabama; and she understood from the said John D. that he sold two of them, to wit, Mingo and Jim, at Vicksburg, Mississippi, and she does not know of his owning any slaves after he left Alabama but those *but those* he carried away with him and their increase.

To the fifth interrogatory, and the allegations on which it is founded, she, answering, says, that from information and belief the

said John D. Bracy, after he left the State of Alabama, resided at Vicksburg and in the State of Mississippi, and then went to the State of Louisiana; but not being satisfied with that country came to the State of Arkansas, without settling down in Louisiana.

To the sixth interrogatory, and allegations on which it is based, she, answering, says, that she does not know in what year the said John D. removed to and settled in this State, but supposes it was in the year A. D. 1847; and that as far as she has any information and belief on the subject, but which she cannot state as on her own knowledge, he brought with him, and had in his possession in this State, the following described slaves, to wit: a negro man named Prince, aged about sixty years; a woman Peggy, aged about sixty years; Betty, a woman, aged about twenty-seven years; Juliet, aged about seventeen years; Molly, a woman, about twenty-three; Susanna, a girl, about six; Washington, a boy, about three; Prince, a boy, about ten; Frank, a boy, about eight; William, a boy, about four; Mary, a girl, about six; Lucy, a girl, about four, and Eliza, an infant.

And that the said John D., after he so came to the State of Arkansas, being then in the State of Louisiana, where this defendant at that time resided, on the nineteenth day of September, A. D. 1849, or about that day, sold to this defendant the slaves last above named, and also Gilbert, an infant, and also an infant child of the said slave Molly, for the price and consideration of thirty-five hundred dollars, which was at that time the full value of said slaves, payable by this defendant in four equal instalments, to wit: on the nineteenth day of September, 1854, for $875, on the nineteenth day of September, A. D. 1855, for the same sum, and on the nineteenth day of September, A. D. 1856, for the same sum, and on the nineteenth day of September, A. D. 1857, for the same sum, for which several sums of money this defendant executed her notes to the said John D., and took a bill of sale for said slaves from him, which she now holds, subject to the inspection of the Court, and of said plaintiff; and that immediately after such purchase, she sent her son, Bracy McRea, into the State of Arkansas, as her agent and attorney in fact, who, as such, received for her and took possession of the said slaves so purchased for her and in her name, some time in the month of October, A. D. 1849; and early in that month, to the best of her knowledge, information, remembrance, and belief, and since which time until the present, this defendant has exercised the exclusive control, possession, and ownership over said slaves so purchased, or such of them as are still living, with their increase; she having, soon after such purchase, in the same fall or winter, also removed to this State into the County of White, where she has ever since resided, exercising the full and exclusive possession and control, as well as ownership, over said slaves. Since this defendant so purchased said slaves, Jose, Mary, and Washington, a part of them, have died; and three infants have been born, to wit: Emily, a child of said Betty;

Pemberton, a child of Molly, and Anna, a child of Juliet. That since the purchase of the said slaves from the said John D., she has let him have about forty bales of cotton, of the value of which she cannot now state, but will make full proof thereof, to which amount she is entitled as a credit on said notes so given for the said slaves; and she has also paid to Messrs. Bond and Maxwell, for the said John D., a sum, the precise amount of which she cannot now state, but which she will prove, and to which she is entitled to a credit on her said notes; all of which payments and delivery of cotton were made before the commencement of this suit; and this defendant, further answering to said last-named interrogatory, says, that at the time she purchased said slaves as aforesaid, she fully believed, and has ever since believed, and still believes, and charges the same to be true, that the said slaves, purchased by her, or carried away from Alabama, as aforesaid, by the said John D., were fully released and discharged from the said deed of trust before they were carried away from said State of Alabama, and she is fully of the opinion that the said John D. so considered it, or he never would have sold them to her. She therefore charges that there was no incumbrance whatever on the said slaves, or any of them, at the time that she purchased them; and avers that she purchased them in good faith, and without any notice or knowledge whatever of a subsisting lien upon them, by virtue of said deed of trust.

In response to the said seventh interrogatory, she says, that she has already fully answered the same in the foregoing part of this answer, except as to the value of said slaves at this time, which value she estimates as follows, to wit: Prince, is scarcely of any value at all; so of Peggy; Betty, of the value of about six hundred dollars; Juliet, about six hundred dollars; Molly, about eight hundred dollars; Susanna, about two hundred and fifty dollars; the boy Prince, about five hundred or six hundred dollars; Frank, about four hundred and fifty dollars; William, about three hundred and fifty dollars; Gilbert, about two hundred and fifty dollars; Lucy, about three hundred and fifty dollars; Eliza, about two hundred and fifty dollars; and the infants above enumerated about one hundred dollars each.

As to the eighth, ninth, and tenth interrogatories, she responds and says, that she has already above answered the same as far as she was able to do so. To such part of the eleventh interrogatory as she has not already above answered, answering, she says, that the said John D. removed to White County, in the State of Arkansas, as above stated, and continued to reside there afterwards until his death, which took place in the month of April, A. D. 1852.

To the twelfth interrogatory, she responds in the affirmative.

In response to the said thirteenth interrogatory, answering, she says, that she is the sister of the said John D. Bracy; and that he resided with her, and in her family, for a period of about eighteen

months, commencing in the spring of 1850, and ending in the autumn of 1851, after which latter date he resided by himself in Searcy, White County, aforesaid, until he died, and died there; he, the said John D., being a single man, and never having been married at all.

To the fourteenth interrogatory, she answers and says, that she has no sufficient information to respond thereto, and refers to the answer of her co-defendant, who is the administrator of the said estate.

To the fifteenth interrogatory she, answering, says, that she has heard that the said John D. was liable for debts in Alabama, but further than this she knows nothing about the matters inquired after by said interrogatory, but what as she has already above stated in her answer to other interrogatories; and again denies, that at the time she purchased and obtained possession of said slaves, as above set forth, that she knew, suspected, or believed, or had any reason to suspect or believe that said slaves were incumbered by said deed of trust, or bound by any other lien whatever.

The sixteenth interrogatory she has already fully answered, in her response to other interrogatories, with this addition, that some of said slaves, when she first knew them, were in the possession of her grandfather and father.

And this defendant further answering the said Bill of Complaint, does not admit that there is any such corporation as the said Branch of the Bank of the State of Alabama at Mobile, or that the said plaintiff has any lawful right to institute or maintain this suit; but calls for such proof of such corporation, and of such right to sue, and also prays, that said complainant may be required to make strict proof of the contracting of said alleged debts, of said deed of trust, and said alleged judgment, and of every other allegation and bill not herein and hereby admitted to be true.

And further answering, she denies, that the said John D. Bracy, for the purpose of defrauding the said complainant, or avoiding the payment of his said alleged debt, clandestinely and fraudulently absconded from the said State of Alabama, or that the said complainant, and said trustee, or his said or other creditors, did not know, or had any information as to where the said John D. had removed to, until within a year before the commencement of this suit; but on the other hand, she charges the truth to be, that the said complainant, by her officers and agents, and the said trustee, and the said sureties of the said John D., knew before he left the State of Alabama, that he was going to leave the State, and knew where he was going to, and consented to his going, and to his taking his slaves with him as aforesaid, and knew then and afterwards that he was going to, and had gone to the State of Mississippi.

And this defendant, further answering, denies, that the said sureties of the said John D. are insolvent, especially her mother, the said Maria Matherson, who still resides in the said State of Alabama,

and is possessed of ample means to pay the said demand of the said complainant, beyond all doubt or controversy.

And this defendant, further answering, says, that she insists upon the full benefit of each and every statute in force in the State of Arkansas for the limitation of actions, which are applicable to the facts of this case; and especially claims under such acts, regulating the limitation of actions, that she purchased said slaves, in good faith, for a full and valuable consideration, without any notice whatever of the complainant's said claim thereto, and has had the quiet, peaceable, exclusive, and adverse possession, control, and ownership of said slaves, so purchased by her, for a continuous period and space of time of more than three full years next before the commencement of this suit, and of which possession she claims the benefit, under such Statute of Limitations.

And this defendant denies all, and all manner of unlawful combination, fraud, and confederacy wherewith she is, and by the said bill, charged, without this, that there is any other matter or thing, in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this Honorable Court shall direct, and prays to be now dismissed with her reasonable costs and charges in this behalf most wrongfully sustained, &c.

A. FOWLER,
Solicitor for Defendant.

State of Arkansas, County of White, *sct.*

Before Beaufort H. Neely, Judge of the Circuit Court in and for said County, Margaret McRea, the abovenamed defendant, being by me first duly sworn, states, on oath, that the facts and matters stated as facts in the annexed and foregoing answer, as of her own knowledge, is true in substance and in fact; and those stated on the information of others, as from hearsay, she believes to be true.

MARGARET MATHERSON.

Sworn to and subscribed before me, this the 29th day of June, A. D. 1853.

BEAUFORT H. NEELY,
Judge as aforesaid.

Filed 4th July, 1853.

WM. FIELD,
Clerk.
By J. A. HUTCHINGS,
Deputy Clerk.

In the Circuit Court of the United States, for the Eastern District of Arkansas. In Chancery.

The answer of Bracy McRea, administrator of the estate of John D. Bracy, deceased, defendant, to the bill of complaint of the Branch of the Bank of the State of Alabama at Mobile, complainant. This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception, which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised, is or are material or necessary for him to make answer unto. This defendant answering, saith: To the first interrogatory, and the allegations contained therein, he knows not and has not been informed, save by the said complainant's said bill of the existence of such deed of trust.

To the second interrogatory, and allegations therein contained, this defendant further saith, that knew certain persons, to wit, Maria Matherson, Billups Gale, and John D. Bracy, as residents of the County of Clark, in the State of Alabama, about the year 1844; that certain negro slaves named as follows, to wit, Prince, aged about 60 years; Christian, aged about 50; Fanny, aged about 19 years; Molly, aged about 17 years; Prince, aged 4 years; Frank, aged 2 years; Peggy, aged about 50 years; Charlotte, aged about 35 years; Betty, aged about 25 years; Millison, aged about 22 years; Jose, aged about 19 years; Jim, aged 17 years; Mingo, aged 15 years; Julia, aged 13 years; Joe, aged 21 years; Primus, aged about 60 years; Sam, aged about 55 years; Nat, aged 30 years; Cain, aged 45 years; January, aged 6 years; Ransum, aged about 4 years; and Chany, aged about 16 years; were in the County of Clark, and State of Alabama, about the year 1844; these are all the negro slaves mentioned in the said bill of complaint, of which this defendant hath any knowledge, and the said defendant does not know that they were included in the same and mentioned in the said bill of complaint.

To the fourth interrogatory, and the allegations contained therein, this defendant, further answering, saith, that he was off at school when said John D. removed from the State of Alabama, and knows not as to the exact time said John D. removed from said State of Alabama, but from what he learned he thinks that it was in 1845 or 1846; nor does this defendant know to what State said John D. removed to from said State of Alabama; nor does said defendant know what slaves or other property said John D. carried with him, or had in his possession, until said defendant knew him in this State in 1849, when the following slaves were owned by him, viz.: Prince, aged about 70 years; Peggy, 60; Jose, about 30

years of age; Betty, about 35 years; Molly, about 25 years; Julia, about 20 years; Prince, about 13 years; Mary, about 7 years; Lucy, about 4 years; Frank, about 5 years; William, about 3 years; Gilbert, about 1 year of age; Eliza, about 4; Susannah, about 5; Washington, about 1 year old; and William, an infant; which are all the negro slaves this defendant has ever known in the possession of said John D. in this State (Arkansas).

To the fifth interrogatory, and to the allegations contained therein, this defendant saith he knows not, but had heard, after this defendant removed to this State, that said John D. had resided in the State of Mississippi, but as to the length of time he knows nothing.

To the sixth interrogatory, and to the allegations therein contained, this defendant, further answering, saith, that he first knew said John D. as a citizen of the County of White, and State of Arkansas, in the fall of 1849, and understood that he had resided here for two or three years previous to that time, and that all the negro slaves this defendant ever had any knowledge of being in the possession of said John D. are described in this defendant's answer to the fourth interrogatory of said complainant's said bill herein; and that said slaves were sold to one Margaret McRea or Bastrop, in Moorhouse Parish, and in the State of Louisiana, about the month of October, 1849, by said John D., for the sum of $3000, and that said slaves were delivered to this defendant (acting under a power of attorney granted by Margaret McRea), at the residence of said John D., in the County of White, in the State of Arkansas, some time in the month of October, 1849, in the presence of David Maxwell.

To the seventh interrogatory, and to the allegations therein contained, the defendant for answer saith, that he knows nothing of said deed of trust, and that the negro slaves described in this defendant's answer to the fourth interrogatory in said complainant's said bill are now in the possession of Margaret McRea, with the exception of Josey, and Mary, and Washington, who are dead, and with the exception of Gilbert, aged 3 years, Lucy, about four years, Susanna, about 5 years, and William, an infant. This defendant has known the said negroes as described in the possession of said John D., in the State of Alabama, and that the property purchased by Margaret McRea of said John D., now in her possession, is worth about $3000. Margaret McRea obtained her title to said negro slaves by purchase, as stated in the answer of this defendant to the sixth interrogatory, contained in said complainant's said bill.

To the eighth interrogatory, and to the allegations contained therein, this defendant, further answering, saith, that the negro slaves now in the possession of Margaret McRea are as follows:—Chloe, aged about 50 years, worth about $200; Diana, aged about 35 years, worth about $600; Lydia, about 16 years of age, worth about $600; Chloe, about 14 years, worth about $500 dollars; Alabama, aged about 60 years, worth about $200; Montgomery, aged

2½ years, worth about $200; Tom, aged about 40, worth about $900; Willis, aged about 40, worth about $900; Nancy, aged about 33, worth about $700; Lucy, aged about 14 years, worth about $500; Charlotte, aged about 12, worth about $450; June, aged about 10, worth about $350; Warner, aged about 8 years, worth about $350; Money, aged about 7 years, worth about $300; Philip, aged about 18 months, worth about $150; Edith aged about 19, and child, about one year old, worth about $700; Sam, aged about 26 years, worth about $800; Talbert, aged about 21 years, worth about $900; Emily, aged about 20, worth about $750; Robert, aged about 40 years, worth about $700; Celia, aged about 33, and infant, worth about $700; Prince, aged about 13, worth about $500; Fanny, aged about 9 years, worth about $350; Caroline, aged about 2 years, worth about $200; Dinah, aged about 25, worth about $600; Letty, aged about 6 years, worth about $300; Betty, aged about 27 years, worth about $650; Abram, aged about 27, worth about $700; Milo, aged about 40 years, worth about $550; Amy, aged about 40 years, worth about $500; Jim, aged about 21 years, worth about $700; Gilbert, aged about 16 years, worth about $600; Nanny, aged about 16 years, worth about $600; Clarissa, aged about 13 years, worth about $450; Mary, about 10 years of age, worth about $350; Dave, aged about 9 years, worth about $300; Chaney, aged about 7 years, worth about $300; Phillis, aged about 2 or 3 years, worth about $200; and Albert, about 12 years of age, worth about $400; Prince, aged about 70 years, worth $200; Betty, aged about 38 years, worth about $600; Prince, aged about 15 years, worth $600; Frank, aged about 9, worth about $400; William, about 6 years, worth about $250; Molly, aged about 27 years, worth about $650; Julia, aged about 23 years, worth about $600, and an infant, worth about $100; Susannah, aged about 8 years, worth about $300; Gilbert, aged about 5 years, worth about $200; Peggy, aged about 60 years, worth about $100; Lucy, aged about 7 years, worth about $250; and William, aged about 3 years, worth about $200; which, to the best of this defendant's knowledge, is the whole of the negro property now in the possession of Margaret McRea, and that the following is the only property this defendant hath ever known said John D. to have ever claimed or owned of all the property now in the possession, or that ever has been in the possession of Margaret McRea, with the exception of Josey and Mary, who are dead, and Washington, viz.: Prince, aged about 70 years; Betty, aged about 38 years; Prince, aged about 15 years; Frank, aged about 9 years; William, aged about 6 years; Molly, aged about 27 years; Julia, aged about 20 years, and an infant; Susannah, aged about 8 years; Gilbert, aged about 5 years; Peggy, aged about 60 years; Lucy, aged about 7 years; Eliza, aged about 7 years, and William, aged about 3 years; the value of which this defendant thinks is about $3700.

To the ninth interrogatory and the allegations therein contained,

this defendant for answer says, that he knows not anything as to said deed of trust, save by this bill of complaint.

To the tenth interrogatory and the allegations contained therein, this defendant for answer saith, that he had heard that said John D. had resided in Mississippi; but as to how long said John D. had resided in said State of Mississippi, he knows not.

To the eleventh interrogatory and the allegations contained therein, this defendant for answer saith, that he first knew said John D. as a resident of this State, in the fall of 1849, and was told that he had lived in White County, Arkansas, for two or three years prior to that time; said John D. died at Surrey, in White County, Arkansas, in the spring of 1852.

To the twelfth interrogatory, &c., this defendant for answer saith, that said John D. did die intestate, and that the defendant in this did administer upon the estate of said John D., by authority of the Probate Court of White County, Arkansas; and this defendant has continued in the administration of said estate up to the present time, and am yet administrator; authority to administer upon said estate was granted day.

To the thirteenth interrogatory, &c., this defendant for answer saith, that said Margaret is, or was, a sister of said John D.; and that said John D. did reside with said Margaret, for the space of about two years; said John D. did not reside with said Margaret, at the time of his death, but resided at Surrey, in White County, Arkansas, where he had resided for about six months prior to his death; that he had never known said Margaret and said John D. to reside together, previous to 1850.

To the fourteenth interrogatory, &c., this defendant exhibits a copy of the inventory of said John D.'s estate, filed in the Clerk's Office, in White County, Arkansas.

To the fifteenth interrogatory, &c., this defendant for answer saith, he knows nothing.

To the sixteenth interrogatory, this defendant for answer saith, that he knew the negroes, or the greater number thereof, in the State of Alabama, prior to said sale to said Margaret, for many years, in the possession of said John D.

To the third interrogatory, &c., this defendant for answer saith, that he knows not, nor has ever been informed, save by said complainant's said bill, of the existence of any such judgment or promissory note, as specified in said bill; and this defendant denies all, and all manner of unlawful combination and confederacy, wherewith he is, by the said bill, charged; without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all of which matters and things, this defen-

dant is ready and willing to aver, maintain, and prove, as this Honorable Court shall direct; and humbly prays to be hence dismissed, with his reasonable costs and charges, in this behalf most wrongfully sustained.

BRACY McREA.

State of Arkansas, County of White.

Personally appeared before me, Beaufort H. Neely, one of the Judges of the Circuit Court in and for the State aforesaid, Bracy McRea, and by me being first duly sworn, states, that the foregoing answer is true and correct statements of all the facts either known to him or derived from the statements of others, in relation to the foregoing Bill of Complaint, and to the allegations contained therein.

BRACY McREA.

In testimony whereof, I have hereunto set my hand, this 25th day of June, 1853, as Judge as aforesaid.

BEAUFORT H. NEELY,
Judge.

Inventory of the estate of John D. Bracy, deceased, referred to in this defendant's answer to the fourteenth interrogatory: 1 grist mill, 1 cotton gin, 3 mules, two yoke of oxen (cattle), 1 wagon, 3 head of cattle, 1 cow and calf, 1 shot-gun, 1 pistol, 1 saddle and bridle, 1 horse, 1 lot school-books, 2 vols. Blackstone's Commentaries, 1 vol. Tucker's Blackstone, 1 vol. Chitty's Blackstone, 2 Christian's do., 1 vol. Vattel's Laws of Nations, 1 vol. Starkey on Evidence, 4 vols. Kent's Commentaries, 1 vol. Cooper's Justinian, 1 vol. Rimes' Blackstone, 3 vols. Digest, 1 vol. Stephen's Pleadings, 1 Equity, 1 vol. Digest of Arkansas, 4 vols. of Bollingbrook, 3 vols. Madison Papers, 1 vol. Canning's Select Speeches, 1 vol. Paley's Works, 2 Brown's Philosophy, 3 vol. Eloquence of the United States, 1 vol. Lampieres Dictionary, 1 vol. Curiosities of Literature, 1 vol. Butterworth's Concordance, 1 vol. Johnson's Lives of the Poets, 1 vol. Shakspeare's Works, 1 small writing table, 1 bookcase, 1 desk, 1 washstand, 1 trunk, 1 washpan, 1 large table, 3 chairs.

Filed 3d August, 1853.

WM. FIELD,
Clerk.
By J. A. HUTCHINGS,
Deputy Clerk.

At Rules, before the Clerk of the United States Circuit Court for the Eastern District of Arkansas, on the 5th day of September, A. D. 1853, being the first Monday of said month, the following proceedings were had, to wit:

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, at Mobile, Complainant,
v.
MARGARET MCREA, and BRACY MCREA, as Administrator of JOHN D. BRACY, deceased, Defendants.
} Chancery.

This day came the said complainants by J. M. Curran, their solicitor, and filed him his replication to the answer of Bracy McRea, administrator, &c., and also a replication to the answer of Margaret McRea, in this case.

Attest, WM. FIELD, Clerk.

In Chancery. Circuit Court of the United States, Eastern District of Arkansas. September Rules, 1853.

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, at Mobile,
v.
MARGARET MCREA and BRACY MCREA, as administrators of JOHN D. BRACY, deceased.
} In Chancery.

The replication of said complainant to the answer of Margaret McRea in the above-entitled case.

This repliant, saving, &c., for replication to said answer of said Margaret says, that she will aver and prove her said bill to be true, certain, and sufficient in law to be answered unto, and that said answer of said Margaret is uncertain, untrue, and insufficient to be replied unto; without this, that there is any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto, confessed, and avoided, traversed, or denied, is true. All which this repliant, is and will be ready to aver, maintain, and prove, as this Honorable Court shall direct, and humbly prays, as in and by her said bill she has already prayed.

CURRAN, Solicitor for Complainant.

Filed, 5th September, 1853.

WILLIAM FIELD, Clerk.

In Chancery. United States Circuit Court, Eastern District of Arkansas. September Rules, 1853.

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, at Mobile,
v.
MARGARET MCREA and BRACY MCREA, as administrators of JOHN D. BRACY, deceased.
} In Chancery.

The replication of said complainant to the answer of Bracy McRea,

as administrator of John D. Bracy, deceased, in the above-entitled cause.

This repliant, saving and reserving, &c., for replication to said answer, says, that she will aver and prove her said bill to be true, certain, and sufficient in law to be answered unto, and that said answer of said defendant is uncertain, untrue, and insufficient to be replied unto; without this, that there is any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed, and avoided, traversed, or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain, and prove, as this Honorable Court shall direct, and humbly prays, as in and by her said bill she has already prayed.

CURRAN,
Solicitor for Complainant.

Filed, 5th September, 1853.

WILLIAM FIELD,
Clerk.

The United States of America, Eastern District of Arkansas.

Be it remembered, that at a Circuit Court of the United States, begun and holden, for the Eastern District of Arkansas, on Monday, the 11th day of April, A. D. 1853, at the court-house, in the City of Little Rock, the Honorable Daniel Ringo, United States District Judge, presiding, the following proceedings were had, to wit:

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA at Mobile, Complainants,
v.
BRACY MCREA, as administrator of JOHN D. BRACY, deceased, and MARGARET MCREA, Defendants.
} In Chancery.

At this day came said parties, and said defendants severally enter into their appearance to this suit, and by consent and agreement of said parties, here in open court expressed, it is ordered by the Court as follows, to wit: That said defendants have until the rule day in July next to file their answer in this cause. That either party shall have leave to take depositions generally, to be read in evidence on the final hearing of this cause, at any time between this date and the first of April next, and such depositions may be taken either according to the rules of this Court, or the laws of the State of Arkansas, and that such depositions may be taken with like effect as if the cause was at issue. And that this suit shall stand for hearing at the next term of this Court.

The United States of America, Eastern District of Arkansas.

Be it remembered, that at a Circuit Court of the United States in and for the Eastern District of Arkansas, continued and holden

at the court-house in the City of Little Rock, on Thursday, the 13th day of April, A. D. 1854, the Honorable Daniel Ringo, United States District Judge for the Eastern and Western Districts of Arkansas, present and holding said Circuit Court, the following proceedings were had on the Chancery side of said Court, to wit:

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, at Mobile, Complainants,
v.
MARGARET MCREA and BRACY MCREA, Administrators of JOHN D. BRACY, deceased, Defendants.
} In Chancery.

At this day came the parties, by their solicitors, and, on motion, it is ordered that the complainants, as also the defendants, have leave to publish their depositions in this cause, which were accordingly opened and filed, and by consent of parties this cause is continued until the next term of this Court; with leave for each party to take depositions in this cause until the first day of the next term of this Court.

And at a term of said Circuit Court, begun and holden at the court-house in the City of Little Rock, on Monday, the 9th day of April, A. D. 1855, being the second Monday of said month, the Honorable Daniel Ringo, United States District Judge, presiding and holding said Court, the following proceedings were had, to wit:

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, at Mobile, Complainant,
v.
MARGARET MCREA, and BRACY MCREA, as Administrators, &c., Defendants.
} In Chancery.

This day came the parties by their attorneys, and on motion of the complainants it is ordered, that they have leave to publish their depositions in this cause, whereupon the same were opened and filed.

And at a term of said Circuit Court, begun and holden at the court-house in the City of Little Rock, on Monday, the ninth day of April, A. D. 1855, being the second Monday of said month, the Honorable Daniel Ringo, United States District Judge, presiding and holding said Court, the following proceedings were had, to wit:

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, at Mobile, Complainant,
v.
MARGARET MCREA, and BRACY MCREA, Administrators, &c., Defendants.
} In Chancery.

This day came the parties aforesaid, by their solicitors, and on motion of the defendants it is ordered, that they have leave to pub-

lish their depositions in this cause, which are accordingly opened and filed.

And at a term of said Circuit Court, begun and holden at the court-house in the City of Little Rock, on Monday, the ninth day of April, A. D. 1855, being the second Monday of said month, the Honorable Daniel Ringo, United States District Judge, presiding and holding said Court, the following proceedings were had, to wit:

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, at Mobile, Complainant,
v.
MARGARET MCREA, and BRACY MCREA, Administrators of JOHN D. BRACY, deceased, Defendants.
} In Chancery.

This day came the parties aforesaid, by their solicitors, and the Court, on motion of said complainant, ordered, that they have leave to take the deposition of witnesses in this cause to prove the presentation of Exhibit B, No. 1, mentioned in said bill, to the administrators of said John D. Bracy for allowance, and for which purpose it is ordered, that said complainant have leave to withdraw the original of said Exhibit from the files in this cause by leaving a copy thereof on file, and the same is now accordingly withdrawn, and a copy thereof left on file; and it is further ordered, that the time for taking said testimony be enlarged to the first Monday of October next.

And at a term of said Court, continued and holden at the court-house in the City of Little Rock, on the first day of October, A. D. 1855, Honorable Daniel Ringo, United States District Judge, presiding and holding said Court, the following proceedings were had, to wit:

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, at Mobile, Complainant,
v.
MARGARET MCREA, and BRACY MCREA, as Administrators of JOHN D. BRACY, deceased, Defendants.
} In Chancery.

This cause came on to be heard on the Bill of Complaint, and the exhibits thereunto attached. The several depositions, on the part of complainant, of J. W. McConaughey and Dandridge McRea, and Exhibit B, No. 1, thereunto attached, and of Henry B. Holcombe and F. S. Blount, and also deposition of R. D. Gayle, and exhibit marked B, thereunto attached, being original deed of trust executed by John D. Bracy to B. Gayle, as trustee; and also duly certified transcripts of certain acts of the Legislature of the State of Ala-

bama, read in evidence on the part of the complainant, and numbered and marked respectively 1, 2, 3, 4, 5, and 6, and also on the part of the complainant, upon the duly certified transcript of the grant of letters of administration on the estate of John D. Bracy, deceased, by the Probate Court of White County, to Bracy McRea, and of all proceedings had in said Probate Court touching said administration up to the 6th day of January, A. D. 1854, and on the part of the defendants, upon the separate answer of Margaret McRea, and the separate answer of Bracy McRea, as administrator of John D. Bracy, deceased, and the bill of sale executed by John D. Bracy to Margaret McRea, on the 19th day of September, A. D. 1849, for certain negro slaves therein mentioned, and the certificate of acknowledgment of record thereunto attached, and the several depositions (taken on the part of the defendants) of Dandridge McRae and John W. Bond, and the several depositions of Melville Bracy and Wm. A. Matherson; and the same being argued by counsel, both on the parts of the complainant and defendants respectively, the same was submitted to the Court; and the Court, being sufficiently advised thereon, doth find, that on the 9th day of December, A. D. 1843, at Clark County, in the State of Alabama, the said John D. Bracy, deceased, Maria Matherson, and Melville Bracy, made and delivered their certain promissory note for the sum of $9065, payable twelve months after date to H. B. Holcombe, cashier, and negotiable and payable at the Branch of the Bank of the State of Alabama, at Mobile, the complainant herein; that said note, at maturity, still remaining due and unpaid, the said complainant instituted suit in the Circuit Court of Mobile County, State of Alabama, against the makers of said note, and defendants, on the 25th day of November, A. D. 1845, it being the November term, A. D. 1845, of said Circuit Court; the said complainant recovered judgment against the said John D. Bracy, Maria Matherson, and Melville Bracy, the makers of said note (they having been duly served with notice of the same), by the consideration and judgment of said Court, for the sum of ten thousand four hundred and eighty-seven $\frac{2}{100}$ dollars, the amount of said note, and interest and damages thereon, together with its costs of suit in that behalf expended; and the Court doth further find, that after the rendition of the judgment aforesaid against him in favor of said complainant, and while the same was in full force and effect, and wholly unpaid, the said John D. Bracy, some time in the year 1846, left the State of Alabama, and removed to the State of Mississippi, where he resided a short time, partly at Vicksburg and partly at Jackson, and from thence, some time in the latter part of the year 1847, the said John D. removed to the State of Louisiana, and finally removed from thence to the State of Arkansas, where he continued to reside from that time up to the time of his death, which occurred some time in the month of April, A. D. eighteen hundred and fifty-two.

And the Court doth further find, that at the time of the removal of the said John D. Bracy from the State of Alabama, as aforesaid, after the rendition of the judgment aforesaid, against him and others, he was possessed, as his own property, of an estate, consisting of negro slaves and other property, which was liable and subject to the satisfaction and payment of said judgment; which said negro slaves, the said John D. Bracy, when he left, as aforesaid, the State of Alabama, removed with him from Alabama, and beyond the reach of the process of the Court wherein said judgment was rendered, leaving the same wholly unpaid and unsatisfied, and in full force and effect; and which slaves (others than a portion which the said John D. Bracy sold, and others who died in the State of Mississippi, when he resided there, as aforesaid), John D. Bracy brought with him to the State of Arkansas. And the Court doth further find, that the said Maria Matherson and Melville Bracy, made said note upon which said judgment was rendered, as securities of said John D. Bracy; although they appear on the face of said note to be joint principals therein, and that said John D. Bracy, after the making of said note, to wit, on the 7th day of June (1844), eighteen hundred and forty-four, in the State of Alabama, executed to one Billups Gayle, as trustee for the said Maria Matherson, a certain deed of trust, whereby he conveyed unto the said Billups Gayle, certain personal property, consisting of negro slaves, &c., in trust for the purpose of indemnifying, securing, and saving harmless, the said Maria Matherson, from all loss, damage, or liability whatsoever, on account of said note.

And the Court doth further find, that upon said judgment, so recovered as aforesaid, by the said complainant, against the said John D. Bracy, Maria Matherson, and Melville Bracy, there was paid to complainant the following amounts, to wit, on the 17th day of June, 1848, there was paid the sum of $\$1397\frac{55}{100}$ dollars, and on the 1st day of May, A.D. 1849, there was paid the further sum of $\$1401\frac{55}{100}$ dollars, leaving a balance due the said complainant by the said John D. Bracy, Maria Matherson, and Melville Bracy; the two latter being, in fact, the said John D. Bracy's sureties, as aforesaid, upon said judgment, on the first day of May, eighteen hundred and forty-nine, ten thousand one hundred and thirty-eight $\frac{55}{100}$ dollars, which was then and is now wholly unpaid.

And the Court doth further find, that on the 19th day of September, A. D. eighteen hundred and forty-nine, the said John D. Bracy, now deceased (then and at that time being a citizen and resident of White County, in the State of Arkansas), but being at that time in the State of Louisiana, with his sister, the said defendant, Margaret McRea (who at that time resided in the State of Louisiana), entered into a corrupt and fraudulent conspiracy, with the object and for the purpose of placing all the property of the said John D. Bracy beyond the reach of his creditors, and especially the complainant (the said

Margaret McRea being at the time well advised of the particular indebtedness aforesaid of the said John D. Bracy to the said complainant), and thereby prevent the creditors of the said John D. Bracy, and especially the complainant, from obtaining satisfaction and payment of their just demands against the said John D. Bracy, and at the same time secure the use and enjoyment of the said property to the said John D. Bracy during his life, and in pursuance of said corrupt and fraudulent agreement the said John D. Bracy and Margaret McRea then and there made and signed a certain instrument in writing, which purported to be a bill of sale of the following named negro slaves, to wit: Prince, a negro man, aged about sixty years; Peggy, a negro woman, aged about sixty years; Betty, a negro woman, aged about twenty-seven years; Joe, a negro man, aged about twenty-four years; Juliett, a negro girl, aged about seventeen years; Molly, a negro woman, aged about twenty-three years; Susanna, a girl, about six years; Washington, a boy, aged about three years, and an infant boy, child of the above named negro woman, Molly; Prince, a boy, aged about ten years; Frank, a boy, aged about eight years; William, a boy, aged about four years; Gilbert, a boy, aged about ten months; Mary, a negro girl, about six years old; Lucy, a girl, aged about four years; Eliza, a girl, aged about three years.

Said negro slaves being then all the slaves then owned and possessed by said John D. Bracy, and being the principal part of his estate, and wherein and whereby the said John D. Bracy purported to transfer, convey, sell, and deliver all his right, title, interest, and claim to the above-mentioned negro slaves, who were then in White County, in the State of Arkansas, to the said Margaret McRea, her heirs and assigns forever, with all the right of warranty known to the laws of Louisiana, for the pretended consideration of thirty-five hundred dollars, payable in four equal instalments. The first the sum of $875, payable 19th September, A. D. 1854; the second for the sum of $875, payable 19th September, A. D. 1855; the third for the sum of $875, payable the 19th September, A. D. 1856; and the fourth for the sum of $875, payable the 19th September, A. D. 1857. For which sums of money it was expressed in said bill of sale that the said Margaret McRea had that day given her "four several promissory notes, corresponding with the falling due of said several payments," and also acknowledged the possession and delivery to her of said negroes; which bill of sale was signed by the said John D. Bracy and Margaret McRea respectively, in Morehouse Parish, Louisiana, on the 19th September, A. D. 1849.

And the Court doth further find that said instrument of conveyance, bill of sale, or written contract, made and entered into by the said John D. and Margaret, was fraudulent, and made for the purpose of hindering, delaying, and defrauding the creditors of the said John D. Bracy, and especially the complainants; and in truth, and

in fact, it was but a mere voluntary conveyance of the negro slaves therein mentioned by the said John D. Bracy, to the said Margaret, with her knowledge, consent, and assent, for the purpose of defrauding his creditors; and for the further purpose of retaining to the said John D. Bracy, the use and enjoyment of said property to the exclusion of the just claims of his creditors, and is utterly and entirely void as to creditors, and conveyed or vested no right whatever in the said Margaret to the said negro slaves, therein purporting to be conveyed, or any or either of them, as against the creditors of said John D. Bracy; and that the said conveyance, bill of sale, or instrument in writing, should be set aside, held for nought, and that said property should be held subject to the just claims of the creditors of the said John D. Bracy, and especially, subject to the claims of said complainant above mentioned. And the Court doth further find that a few months after the execution of the said instrument in writing, the said Margaret McRea removed to White County, in Arkansas, to the place of residence of her brother, the said John D. Bracy, and that the said Margaret and John D. resided together, until the said John D. removed to the Town of Searcy, in the said County, in the latter part of the year 1851, where he continued to reside until his death, in April, 1852. That the said Margaret McRea resides upon and owns the plantation upon which the said John D. formerly resided, in White County, Arkansas, and was for some time before and at the commencement of this suit, in the possession of all the negro slaves mentioned in said instrument in writing above mentioned, made and signed by the said John D. and the said Margaret, except such as have died. And the Court doth further find, that previous to the institution of this suit, the above named negroes, to wit, Josey, Mary, and Washington, have departed this life, and that since the making of said conveyance, bill of sale, or instrument in writing aforesaid, certain of the therein mentioned negro slaves have had increase born to them, to wit: the said negro woman Betty, has had born to her a female child, named Emily; the said negro slave Molly has had born to her a boy child, named Pendleton; and the said negro woman Anna has had born to her a girl child, Anna, which said three children, increase as aforesaid, are or were at the institution of this suit in the possession of the said Margaret McRea, and are all subject to the claim of the creditors of the said John D. Bracy, and especially to the claim of said complainant.

And the Court doth further find, that the value of said negro slaves in the possession of said Margaret McRea amounts to the sum of seven thousand five hundred dollars. And the Court doth further find, that the said John D. Bracy departed this life in White County, in the Eastern District of Arkansas, some time in the month of April, A. D. 1852, intestate, and that on the 3d day of May, A. D. 1852, letters of administration on the estate of said John D. Bracy,

deceased, were in due form of law granted by the Probate Court of said County to the said defendant, Bracy McRea, who duly qualified, gave bond, and took upon himself the burden of said administration, and from that time has continued to be, and is now the duly appointed and acting administrator of said John D. Bracy, deceased.

And the Court doth further find that on the day of April, 1853, the said complainant caused to be presented for examination and allowance to the said Bracy McRea, as administrator of the said John D. Bracy, a duly certified and authenticated transcript of the judgment aforesaid, recovered by the said complainant against the said John D. Bracy, Maria Matherson, and Melville Bracy, together with an account and statement thereunto attached, of the balance due, both principal and interest, on said judgment, after allowing and deducting the two separate amounts or sums paid thereon, as aforesaid, by the said John D. Bracy, and showing a balance due said complainant on said judgment of $12,848$\frac{66}{100}$ on the 27th day of September, A. D. 1852, being the principal sum of $10,138$\frac{99}{100}$ due on the 1st May, 1849 (after deducting the payments made by the said John D. Bracy) and the further sum of 2709\frac{77}{100}$ being interest (at the rate allowed by the laws of Alabama, where said judgment was rendered upon said judgment, to wit, 8 per cent. per annum) from the said 1st day of May, A. D. 1849, up to the 27th day of September, A. D. 1852, all of which debt, and account, and balance due, was duly authenticated and sworn to by Henry B. Holcombe, assistant commissioner of said Branch Bank of Alabama, at Mobile, and who was the proper person authorized by law to authenticate and make affidavit to the justness and the truth thereof; and thereupon, on the said day of April, A. D. 1853, the said Bracy McRea, as such administrator, was then and there requested to examine and allow the same, which the said Bracy McRea as such administrator then and there refused to do; but on the contrary, as such administrator, refused to allow and rejected the same, and indorsed his rejection thereof upon said transcript.

And the doth further find, that the said claim, so presented for allowance by the said complainant to the said defendant, Bracy McRea, as such administrator, was justly due, and should have been by him allowed against said estate; and doth further find, that at time of the presenting of the said account and transcript, to the said administrator, there was justly due and owing to the said complainant, by the said estate of John D. Bracy, deceased, the said sum of $12,848$\frac{66}{100}$, principal and interest, due on the 27th September, A.D. 1852, together with the further sum of 405\frac{66}{100}$ dollars, being interest at the rate of 8 per cent. per annum, from the said 27th day of September, A.D. 1852, up to the day of April, A.D. 1853, when said claim was so presented for allowance, on said principal sum of $10,138$\frac{99}{100}$ dollars, which sum should have been allowed by said administrator, in favor of said complainant.

It is therefore ordered, considered, and adjudged, that the said

complainant do have and recover, against the said defendant, Bracy McRea, as administrator of John D. Bracy, deceased, the sum of $10,138\frac{88}{100}$, ten thousand one hundred and thirty-eight $\frac{88}{100}$ dollars residue of debt, and the further sum of five thousand one hundred and forty three $\frac{10}{100}$ dollars damages (being interest at the rate of 8 per cent. per annum, on said residue of debt, from the first day of May, A.D. 1849, until the day of the date of this decree), for the detention thereof, against the goods and chattels, lands, tenements, right, credits, and effects, that have come into the hands of said defendant, Bracy McRea, as such administrator.

And it further considered, ordered, and adjudged, that the instrument in writing, bill of sale, or conveyance, made and signed on the 19th day of September, A.D. 1849, by the said John D Bracy, now deceased, and the said Margaret McRea, wherein and whereby the said John D. Bracy purported and pretended to sell, assign, transfer, and convey, unto the said Margaret McRea, all his right, title, and interest, to the negro slaves therein mentioned, to wit, Prince, Peggy, Betty, Joe, Juliett, Molly and her infant boy child, Susanna, Washington, Prince, Frank, William, Gilbert, Mary, and Lucy Eliza, for the pretended consideration of $3500 dollars, be and the same is hereby cancelled, set aside, and held for nought and void, as to the creditors of said John D. Bracy, deceased, as having been made and entered into, by the said John D. and the said Margaret, for the purpose of hindering, delaying, and defrauding, the creditors of the said John D. Bracy, now deceased, and especially this complainant.

And it is further considered, ordered, and adjudged, that the said Margaret McRea be, and she is hereby declared to have received, and to now hold the said negro slaves, and each and every of them, and the issue and increase that has been born since the execution of said instrument in writing, in trust for the use and benefit of said complainant, except such of said negro slaves as have died before the institution of this suit as above set forth.

And it is further considered, ordered, and adjudged, that the Marshal of this Court, for the Eastern District of Arkansas (who is hereby appointed a special commissioner for that purpose), be and he is hereby directed to take possession forthwith of the said negro slaves in said instrument of writing specified, to wit, Prince, Peggy, Betty, Juliett, Molly, Susanna, Washington, Molly's infant (a boy), Young Prince, Frank, William, Gilbert, Lucy Eliza, and Emily, a child of said Betty, and Pendleton, a child of said Molly, and Anna, a child of said Juliett, who have been born since the making of said instrument in writing, together with such other increase as may have been born to any of the said female slaves, since the execution of said instrument in writing (Jose, Washington, and Mary having died before the institution of this suit), and in case the said Margaret McRea, or the said Bracy McRea, shall not pay to the said complainant the said sum of money, both debt and damages, as above adjudged to be due and owing to the said complainant by the estate

of said John D. Bracy, within 30 days from the rendition of this decree, it is further considered, ordered, and adjudged, that said Marshal, as such commissioner, shall thereupon proceed to sell said negro slaves at public vendue, for cash in hand, to the highest bidder; said sale to take place at the court-house door, in the Town of Searcy, in White County, State of Arkansas, between the usual hours of judicial sales; said Marshal having first given sixty days' previous notice of the time, place, and terms of said sale by public advertisements, put up, one at the court-house door, in the town of Searcy aforesaid, and also by publishing the same in some weekly newspaper, published in the City of Little Rock, for four successive weekly insertions, previous to said day of sale, and in case of the said Margaret McRea, or the said Bracy McRea, shall not, previous to said day of sale, have paid to said complainants the sums of money, both debt and damages, above decreed in favor of complainant, against the said Bracy McRea, as administrator as aforesaid, then the said Marshal, as such commissioner, shall proceed to sell, and shall sell, said negro slaves, and each and every of them, to the highest bidder, for cash in hand, and shall hold the proceeds subject to the order of this Court; and it is further considered, ordered. and adjudged, that said Marshal, as such commissioner, shall make report to this Court of his proceedings in the premises on the first rule day after said sale shall take place.

And it is further considered, ordered, and adjudged, that in case any and all other creditors of the said John D. Bracy, deceased, who have duly authenticated, proved up, and had allowed their claim or claims against the estate of John D. Bracy, deceased, or who are entitled by law to have their claims or demands allowed against said estate, shall be entitled to their pro rata in the benefit and result of this suit; provided that they shall, more than thirty days before the first day of the next term of this Court, present to the special master of this Court their said claims, duly authenticated and proven, as required by law or allowed, and shall also express and declare, in writing, to the said master, their willingness and consent to bear and defray their proportional share in the costs and expenses incurred, or that shall yet be incurred, by said complainant in prosecuting this suit; and William Field, Clerk of this Court, is hereby appointed special master to audit and allow said accounts, who shall make report of his proceedings as such master to this Court, on or before the third day of the next term thereof.

It is further ordered, adjudged, and decreed, that said Bracy McRea, out of the assets in his hands unadministered belonging to the estate of John D. Bracy, deceased, and the said Margaret McRea, do pay unto the said complainant all her costs in and about this suit expended, to be taxed, &c.

Whereupon the said defendants prayed an appeal from said decree

to the Supreme Court of the United States, which appeal is granted by the Court, upon condition that the defendant, Margaret McRea, execute an appeal bond to the complainant in the sum of ten thousand dollars, with good and sufficient security, conditioned according to law, which bond is to be approved by this Court or a Judge thereof.

And on the first day of November, A. D. 1855, the said appeal bond was filed with the Clerk of this Court, and approved by the Honorable Daniel Ringo, United States Judge, for the District of Arkansas, which bond is in the following words and figures, to wit: (See on page 128.)

The United States of America, Eastern District of Arkansas, *sct.*

In the Circuit Court of the United States for the Eastern District of Arkansas.

The President of the United States of America to Isaac W. Lenoir and N. H. R. Dawson, or either of them, of the County of and State of Alabama, greeting:

Whereas, in the suit in Chancery now pending in our Circuit Court of the United States for the District aforesaid, wherein the Branch of the Bank of the State of Alabama, at Mobile, is complainant, and Margaret McRea and Bracy McRea, as administrators of John D. Bracy, deceased, are defendants, by consent and agreement of the parties, you, or either of you, are hereby appointed commissioners of this Court in that behalf to take the depositions of witnesses herein and hereafter named, upon the interrogatories and cross-interrogatories filed in the cause, a copy of which are hereunto attached.

You, or either of you, are therefore required to cause to come before you, at such times and places as you shall appoint, the following named witnesses on the part of said complainant, to wit, Reuse Gayle, a witness on the part of complainant, and that you then and there examine them upon their corporate oaths first taken before you upon the Holy Evangelists, and to reduce their said examinations and answers to said interrogatories and cross-interrogatories to writing; and that when you have so taken their testimony that you send the same, with this commission, closed up under your seal, to our said Circuit Court, at the City of Little Rock, without delay.

[SEAL.] In testimony whereof, Roger B. Taney, Chief Justice of the United States, hath caused the seal of said Circuit Court to be hereto attached, the 24th day of July, 1854, and in the year of our Independence the 78th.

Attest, WM. FIELD,
Clerk.

In the Circuit Court of the United States in and for the Eastern District of the State of Arkansas. In Chancery sitting.

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, at Mobile, Complainants,
v.
MARGARET MCREA and BRACY MCREA, as Administrators of JOHN D. BRACY, deceased, Defendants.
} In Chancery.

Interrogatories to be propounded to Reuse Gayle, a witness on the part of the complainant.

Interrogatory first. Do you know the parties to this suit, or any, or which of them? And if yea, where they, or any of them, resided when you knew them?

Interrogatory second. Did you know John D. Bracy (now dead) in his lifetime? And if yea, state where he resided when you knew him, the length of your acquaintance with him, the terms of intimacy existing between you, what was his worldly condition, *i. e.* as regards his estate, what opportunities of being informed therein.

Interrogatory third. Please examine the instrument under seal herewith attached, marked Exhibit A, and state if you know Billups Gayle, whose name appears as trustee therein, and what has become of him. State also whether you ever signed such an instrument as a witness thereto; and if so, the paper referred to herein as Exhibit A, is a true and correct copy thereof; and if you know what has become of the "original," and who executed the same, by whose request you signed the same, whether the trustee accepted the same, whether any other attesting witness signed the same to your knowledge, and when, and at whose request, and where the negroes mentioned in said deed of trust were at the time of the execution of said deed of trust.

Interrogatory fourth. State particularly if you knew John D. Bracy when he lived in Clark County, in the State of Alabama? how long? when he left there? and under what circumstances?

Interrogatory fifth. State if you knew Margaret McRea, one of the defendants, when she lived in Clark County, Alabama? If so, state with whom she lived, and how far she lived from the said John D. Bracy, and if she was related to him? and if so, in what degree?

Interrogatory sixth. State if you know Mariah Matherson, whose name appears in said Exhibit A, as the beneficiary in said deed of trust? and if so, where she resided, and whether she was in any wise related to said John D. Bracy and the said Margaret McRea? and if so, in what degree, and where she resided, and how far from the said John D. Bracy and Margaret McRea?

Interrogatory sixth. State if you know when Margaret McRea left Alabama?

Interrogatory seventh. Did you know personally any of the negroes mentioned in said instrument herein referred to as Exhibit A? and if so, which of them, and what has become of them?

Interrogatory eighth. Were you in any manner related to said Billups Gayle? If he is dead, who is or who was his administrator or executor?

Lastly. Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CURRAN & GALLAGHER,
Solicitors for Complainant.

A Copy.

Attest, WILLIAM FIELD,
Clerk.

As solicitor for the defendants, I agree that the plaintiff may take depositions on and according to the nine foregoing interrogatories propounded by the defendants, herewith furnished, before Isaac W. Lenoir or W. H. R. Dawson, as Commissioner, by consent, and without any order of Court thereto, and that a commission may issue to him, either or both of them, for that purpose, accordingly, hereby waiving all form and any order of the Court or Judge.

A. FOWLE.

A Copy.

Attest, WM. FIELD,
Clerk.

Cross-interrogatories filed by defendant, to be propounded to Reuse Gayle, a witness on the part of the complainant.

First cross-interrogatory. Do you or not know, that before the said John D. Bracy left the State of Alabama, delivered up to the said Billups Gayle, as such trustee, or to some other person for his benefit, a large number of slaves mentioned in said mortgage or deed of trust, to be sold for the satisfaction thereof; and if so, what was the account of the proceeds of such sale, and what application was made of such proceeds?

Second cross-interrogatory. Do you not know that the said debt and liability in said mortgage or deed of trust mentioned, or a large part thereof, has been paid? and if so, by whom paid, and when and how much was paid?

Third cross-interrogatory. Do you not know that the said John D. Bracy, when he left the State of Alabama and removed therefrom, left with the knowledge and consent and permission of the said plaintiffs, or her agent, or her attorney, and of the said Billups Gayle, trustee as aforesaid, and of the said Maria Matherson, or of some one or more of them; and that they, or some one or more of

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them, when he left, knew where he was going, and afterwards knew where he resided in the State of Mississippi, from the time of his leaving Alabama? State all you know of your own knowledge, or have heard from the plaintiff, or her agents, or the persons above-named in this interrogatory, fully and in detail.

Fourth cross-interrogatory, and last. Do you know of any other matter or thing which may be of any benefit or service to any of the parties to this suit; if so, state fully the extent of your knowledge, in every particular, in your answer.

A. FOWLE,
Solicitor for Defendants.

A true copy from the original, on file in my office.
Attest, WM. FIELD,
Clerk.

The State of Alabama, Dallas County.

By virtue of a commission issued from the Clerk of the Circuit Court of the United States, for the Eastern District of Arkansas, on the 24th day of July, 1854, directed Isaac W. Lenoir and N. H. R. Dawson, appointing them, or either of them, commissioners to take the answers of Ruse D. Gayle to certain interrogations annexed to said commission, to be read in evidence upon the trial of a certain suit in said Court pending, wherein the Branch Bank of the State of Alabama, at Mobile, is complainant, and Margaret McRea, and Bracy McRea, administrators of John D. Bracy, are defendants.

Now I, N. H. R. Dawson, one of the said commissioners, have called and caused to come and appear before me, Ruse D. Gayle, the said witness, whose personal identity is well known to me, at my office in the Town of Cahaba, Ala, and having examined, cautioned, and sworn the said witness, that the answers he shall give and make to the interrogatories shall be the truth, the whole truth, and nothing but the truth, the witness deposeth and answerest as follows:

To the first interrogatory, witness answers. He knows the defendant; and knows that there was a bank in Mobile, known as the Branch of the Bank of the State of Alabama. The defendants, Margaret McRea and Bracy McRea, resided in Clark County in this State, the time witness knew them.

To the second interrogatory, witness answers. He knew John D. Bracy, in Clark County, in this State, where he resided; witness knew him from his, witness's, childhood, up to the time said Bracy left this State, which, he thinks, was some time in the year 1846; there was an intimate and familiar friendship between witness and said Bracy, but not the intimacy of a confidant. Said John D. Bracy was reputed to be well off as regards property; he owned, or claimed to own, a plantation on the Tombigbee River, and negroes; witness has heard Bracy speak of his plantation and negroes, and once was on his plantation, and seen a number of negroes there many

Interrogatory seventh. Did you know personally any of the negroes mentioned in said instrument herein referred to as Exhibit A? and if so, which of them, and what has become of them?

Interrogatory eighth. Were you in any manner related to said Billups Gayle? If he is dead, who is or who was his administrator or executor?

Lastly. Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CURRAN & GALLAGHER,
Solicitors for Complainant.

A Copy.

Attest, WILLIAM FIELD,
Clerk.

As solicitor for the defendants, I agree that the plaintiff may take depositions on and according to the nine foregoing interrogatories propounded by the defendants, herewith furnished, before Isaac W. Lenoir or W. H. R. Dawson, as Commissioner, by consent, and without any order of Court thereto, and that a commission may issue to him, either or both of them, for that purpose, accordingly, hereby waiving all form and any order of the Court or Judge.

A. FOWLE.

A Copy.

Attest, WM. FIELD,
Clerk.

Cross-interrogatories filed by defendant, to be propounded to Reuse Gayle, a witness on the part of the complainant.

First cross-interrogatory. Do you or not know, that before the said John D. Bracy left the State of Alabama, delivered up to the said Billups Gayle, as such trustee, or to some other person for his benefit, a large number of slaves mentioned in said mortgage or deed of trust, to be sold for the satisfaction thereof; and if so, what was the account of the proceeds of such sale, and what application was made of such proceeds?

Second cross-interrogatory. Do you not know that the said debt and liability in said mortgage or deed of trust mentioned, or a large part thereof, has been paid? and if so, by whom paid, and when and how much was paid?

Third cross-interrogatory. Do you not know that the said John D. Bracy, when he left the State of Alabama and removed therefrom, left with the knowledge and consent and permission of the said plaintiffs, or her agent, or her attorney, and of the said Billups Gayle, trustee as aforesaid, and of the said Maria Matherson, or of some one or more of them; and that they, or some one or more of

them, when he left, knew where he was going, and afterwards knew where he resided in the State of Mississippi, from the time of his leaving Alabama? State all you know of your own knowledge, or have heard from the plaintiff, or her agents, or the persons above-named in this interrogatory, fully and in detail.

Fourth cross-interrogatory, and last. Do you know of any other matter or thing which may be of any benefit or service to any of the parties to this suit; if so, state fully the extent of your knowledge, in every particular, in your answer.

A. FOWLE,
Solicitor for Defendants.

A true copy from the original, on file in my office.
Attest, WM. FIELD,
Clerk.

The State of Alabama, Dallas County.

By virtue of a commission issued from the Clerk of the Circuit Court of the United States, for the Eastern District of Arkansas, on the 24th day of July, 1854, directed Isaac W. Lenoir and N. H. R. Dawson, appointing them, or either of them, commissioners to take the answers of Ruse D. Gayle to certain interrogations annexed to said commission, to be read in evidence upon the trial of a certain suit in said Court pending, wherein the Branch Bank of the State of Alabama, at Mobile, is complainant, and Margaret McRea, and Bracy McRea, administrators of John D. Bracy, are defendants.

Now I, N. H. R. Dawson, one of the said commissioners, have called and caused to come and appear before me, Ruse D. Gayle, the said witness, whose personal identity is well known to me, at my office in the Town of Cahaba, Ala, and having examined, cautioned, and sworn the said witness, that the answers he shall give and make to the interrogatories shall be the truth, the whole truth, and nothing but the truth, the witness deposeth and answerest as follows:

To the first interrogatory, witness answers. He knows the defendant; and knows that there was a bank in Mobile, known as the Branch of the Bank of the State of Alabama. The defendants, Margaret McRea and Bracy McRea, resided in Clark County in this State, the time witness knew them.

To the second interrogatory, witness answers. He knew John D. Bracy, in Clark County, in this State, where he resided; witness knew him from his, witness's, childhood, up to the time said Bracy left this State, which, he thinks, was some time in the year 1846; there was an intimate and familiar friendship between witness and said Bracy, but not the intimacy of a confidant. Said John D. Bracy was reputed to be well off as regards property; he owned, or claimed to own, a plantation on the Tombigbee River, and negroes; witness has heard Bracy speak of his plantation and negroes, and once was on his plantation, and seen a number of negroes there many

years ago. My opportunities for knowing his worldly condition, as regards property, was such as might have enabled me to know more than I do in regard to his property, but all that I do know with certainty, was derived from the one visit spoken of, and what I have heard Bracy say about his property.

To the third interrogatory, witness answers. I knew Billups Gayle, whose name is mentioned in Exhibit A; he was my brother; he is now dead. I did sign an instrument as witness, executed by John D. Bracy to my brother Billups Gayle, as trustee of Mrs. Maria Matherson. Exhibit A, referred to, having been compared by me with the original, is, in substance, a true copy thereof.

(The commissioner states, that the instrument hereto attached, marked B, was shown to the witness and identified by said witness as the original instrument; the commission attaches it to the answers and commission, and encloses it.) Witness further answering, says, that the original instrument, which I have just seen, was executed by John D. Bracy, Billups Gayle, and Maria Matherson, in my presence, and as well as I now recollect, in the presence of Wm. A. Matherson and Thomas McFladeger, whose names appear as subscribing witnesses. I signed the instrument as a witness at the request of John D. Bracy, so did Wm. A. Matherson and McFladeger, according to my best recollection, on the day and year specified in said deed of trust, and Billups Gayle accepted the same. I do not know where the negroes were at the time of the execution of said deed of trust; they were not present. John D. Bracy, at the time above spoken of, lived sometimes at his plantation on the Bigbee River, and sometimes at his mother's, Mrs. Maria Matherson, in Clark County, in this State; said deed of trust was executed at the house of Mrs. Maria Matherson, the mother of John D. Bracy.

To the fourth interrogatory, witness answers. I knew John D. Bracy when he lived in Clark County, in Alabama, for twenty years or more. I think said John D. left Clark County some time in 1846 or the early part of 1847. I do not know of my own knowledge under what circumstances said John D. left Clark County; and all that I do know of the circumstances which led to his leaving is from hearsay.

To the fifth interrogatory. I knew Margaret McRea when she lived in Clark County; she lived with her husband, D. R. W. McRae, about ten miles from Mrs. Matherson's, where John D. Bracy was in the habit of staying; she was reputed to be, and called by John D. Bracy, his sister, and recognized by all who knew them.

To the sixth, witness answers. I knew Maria Matherson, the beneficiary in said deed; she resides in Clark County, in this State, and is known as the mother of John D. Bracy and Margaret McRae.

To the seventh interrogatory, witness answers. I do not at this time recollect when Margaret McRae left Alabama, but know that

she and her husband did leave and move west some time *some time* after John D. Bracy left.

To the eighth interrogatory, witness answers. I do not know personally any of the negroes in said deed of trust mentioned, except a negro man named Prince; my recollection of him is that he was a large, tall, black, negro foreman.

To the ninth interrogatory, witness answers. I am the brother of Billups Gayle, deceased, who died without a will, and I am his administrator.

Lastly. Witness says, I have now stated all I recollect concerning the matters inquired of.

R. D. GAYLE.

To the first cross-interrogatory, witness answers. I do not know that John D. Bracy delivered up any negroes to Billups Gayle, as trustee for Mrs. Matherson, but heard my brother Billups, in his lifetime, say, he had sold some of John D. Bracy's negroes; and since the death of my said brother, I found, among his papers, an instrument from Henry B. Holcombe, Assistant Commissioner of the Bank, from which I learn that my said brother sold twelve of the negroes, mentioned in the deed of trust, and two not embraced in the deed; which two, I presume, were children; the increase of the negroes in deed, as stated by Holcombe. The nett proceeds of which said sale was directed by said Holcombe to be paid by my said brother, to A. B. Cooper, Esquire, Bank Attorney, in Clark County, whose receipt I also find, wherein the Bank received three thousand and $\frac{60}{100}$ dollars, to be applied to John D. Bracy's indebtedness to said Bank; to which particular debt of his, however, it was applied, I do not know. The receipt of A. B. Cooper, whose signature I am well acquainted with, and state to be his, is in the words and figures, following:

"Received of Billups Gayle, S. W. Davis' bill of this date, on Robert Desha & Co., favor of B. Gayle, due 3d December, 1847, for the above sum, indorsed by Gayle, in payment of the above, and on account of the within order.

(Signed) A. B. COOPER.

Sept. 3d, 1847.

The amount of $3001 60, in figures, appears immediately above the receipt, of which the foregoing is a copy; and is the summing up of a calculation in figures.

To the second interrogatory witness answers. I know, in answer to this interrogatory, nothing more than is contained in the foregoing answer.

To the third cross-interrogatory witness answers. I do not know that John D. Bracy left Alabama with the consent or knowledge of either of the Banks; I do not know whether he left with Billups Gayle's consent or not, or with the consent of Mrs. Matherson; but

presume that he did leave with the consent of Mrs. Matherson and Billups Gayle, from perusing the following instrument, copied below, which I found among the papers of Billups Gayle, after his death, to wit.

The State of Alabama, Clark County.

I, Maria Matherson, in consideration of one dollar to me in hand paid, by John D. Bracy, the receipt of which I acknowledge, do release to him my claim upon the following slaves: Prince, Christian, Fanny, Molly, Mary, Little Prince, Frank, Peggy, Betty, Millison, Josey, Jim, Mingo, Juliet, Charlotte, Tom, Joe, two wagons, and six mules, described in a deed of trust for my indemnity, executed by the said John D. Bracy, dated 7th day of June, 1844, to Billups Gayle, trustee, and recorded in the office of the Clerk of the County Court of Clark County, in Book D, page 268. And I do hereby authorize the said Billups to discharge from the operation of the said deed the said slaves; and do hereby covenant and agree, that I will not set up any claim for the same, under its provisions.

Witness my hand and seal, this 15th day of January, 1846.

(Signed) MARIA MATHERSON.

W. A. MATHERSON,
R. D. GAYLE.

(The Commissioner certifies the foregoing to be a true and correct copy of a paper produced by the witness on his examination, which said witness declines to allow to be attached to his answer, but retains the same in his possession.) Witness states that he was one of the subscribing witnesses, and that Maria Matherson signed the same in his presence, and in the presence of W. A. Matherson, the other subscribing witness.

To the fourth cross-interrogatory, witness answers. I know nothing more in relation to this matter that I think will benefit either of the parties. I have endeavored to tell all I know concerning the same, and recollect nothing further.

R. D. GAYLE.

Now I, N. H. R. Dawson, the Commissioner, do hereby further certify, that the foregoing answers were taken down and written in the words of said witness; that they were afterwards read over to him; that he assented, swore to, and subscribed the same, in presence; that I am not of kin, counsel, attorney, or either of the parties, nor interested in the event of said suit; and I enclose the same, together with the commission aforesaid, to the Clerk of said Court, whence the same issued, as my full execution of the said commission.

In witness whereof I have hereunto set my hand and affixed my seal, this 2d day of November, 1854.

N. H. R. DAWSON, [SEAL.]
Commissioner.

United States Circuit Court, Eastern District of Arkansas, *ss.*

April Term, 1855. 8th May, 1855.

"THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, at Mobile, Complainant,
v.
MARGARET MCREA and BRACY MCREA, Administrators of JOHN D. BRACY, deceased, Defendants.

This day came the parties aforesaid by their solicitors, and the Court, on motion of said complainant, ordered that they have leave to take the depositions of witnesses in this cause, to prove the presentation of Exhibit B, No. 1, mentioned in said bill, to the administrator of the said John D. Bracy for allowance, and for which purpose it is ordered that the said complainant have leave to withdraw the original of said exhibit from the files in this cause, by leaving a copy thereof left on file; and the same is now accordingly withdrawn, and a copy thereof left on file; and it is further ordered that the time for taking said testimony be enlarged to the first Monday of October next."

A true copy from the record.

Attest, WM. FIELD, Clerk.

United States of America, Eastern District of Arkansas.

The President of the United States of America, to any Judge or Justice of the Peace of the United States:

You are hereby commanded to cause to come before you all witnesses whatever, and them diligently examine, as well on the part of the plaintiff as of the defendant, in a certain suit now pending in our said Circuit Court, in which the Branch of the Bank of the State of Alabama, at Mobile, is complainant, and Margaret McRea and Bracy McRea, administrators of John D. Bracy, deceased, defendants. (On part of complainants.)

That you then and there examine them apart, upon their respective corporeal oaths, first taken before you upon the Holy Evangelists, and that you reduce their examinations to writing; and when you shall have so taken them, that you send the same, with this dedimus, closed up under your seal, to our said Circuit Court, at the City of Little Rock, without delay.

[SEAL.] In testimony whereof Roger B. Taney, Chief Justice of the United States, hath caused the seal of said Circuit Court to be hereunto affixed, this 14th day of May, A. D. 1855, and of American independence the 79th year.

Attest, WM. FIELD, Clerk.

The execution of this commission appears by the schedule hereunto annexed.

J. W. BOND,
Justice of the Peace.

The depositions hereunto annexed are taken by consent and upon personal notice, formal notice in writing being waived.

WATKINS & GALLAGHER,
McCONAUGHEY & McREA.

June 26, 1855.

Depositions of witnesses, taken, sworn to, and subscribed before John W. Bond, an acting and duly commissioned Justice of the Peace of the State of Arkansas, within and for the County of White, at the office of the Clerk of the Circuit Court of said County, in the Town of Searcy, on the 26th day of June, A. D. 1855, by virtue and in the pursuance of the commission hereto annexed, to be read in evidence on the trial of a certain cause depending in the Circuit Court of the United States, in Chancery, at Little Rock, in and for the Eastern District of Arkansas, wherein the Branch of the Bank of the State of Alabama, at Mobile, is complainant, and Margaret McRea, and Bracy McRea, as administrators of John D. Bracy, deceased, are defendants, on the part of the complainants, at which time and place there appeared for the complainant George C. Watkins, Esq., and for the defendants Messrs. McConaughey and McRea, as counsel for the respective parties. And then and there was produced before me, James W. McConaughey, a witness, known to me to be of lawful age, who, being duly sworn to testify the truth, the whole truth, and nothing but the truth, touching his personal knowledge of anything having relation to the matters in controversy between the parties in the suit aforesaid, and then and there, on his oath aforesaid, depose as follows, to wit:

Some time in the spring of 1853, James M. Curnan, Esq., of Little Rock, forwarded to me two claims, with a request that I would present the same to Bracy McRea, as administrator of the estate of John D. Bracy, deceased, and for allowance or rejection; in accordance with said request I presented the said claims, and from an inspection of the accompanying paper, marked Exhibit B, No. 1, I am satisfied that it is one of the said claims; and further this deponent saith not.

JAS. W. McCONAUGHEY.

And at the same time and place there was also produced before me Dandradge McRea, a witness, known to me to be of lawful age, who, being duly sworn to testify the truth, the whole truth, and nothing but the truth, concerning his knowledge of anything having relation to the matters in controversy between the parties in the suit aforesaid, did on his oath aforesaid then and depose as follows, to wit:

As to the presentation or rejection of the claim marked as Exhibit B, No. 1, I know nothing. I am acquainted with the signature of Bracy McRea, and am satisfied that his signature upon the indorsement of and rejecting said claim is his proper signature.

D. McRAE.

The State of Alabama, Mobile County.

Be it remembered, that at a term of the Honorable Circuit Court begun and holden in and for said County, at the court-house of said County, in the City of Mobile, on the fourth Monday after the fourth Monday of October, A. D. 1845, the Honorable John D. Phelan, Judge, then and there presiding, the following proceedings were had:

Notice to John D. Bracy, Maria Matherson, Melville Bracy.

Take notice, that at the next term of the Circuit Court, to be held for the County of Mobile, on the fourth after the fourth Monday of October next, J. T. L. Toulmin, as President of the Branch of the Bank of the State of Alabama, at Mobile, will move said Court for judgment against you, for and on behalf of said Branch Bank, as makers of a promissory note, expressly made payable and negotiable at the said Branch Bank; which note bears date the 9th December, 1843, at Clark County; by which note you, as makers thereof, promise, twelve months after date, to pay Henry B. Holcombe, Cashier, or bearer, the sum of nine thousand and sixty-five dollars, with interest from date, for value received; which said promissory note is regularly indorsed to said Bank.

T. J. TOULMIN,
President.
LINDSAY & FOX,
Bank Attorneys.

Issued 20th day of June, 1845.

The Sheriff of Clark County will execute this notice according to law, and return the same to the Cashier of the Branch Bank, at Mobile, by the first day of November, 1845.

I, T. J. Toulmin, President of the Branch of the Bank of the State of Alabama, at Mobile, do hereby certify, that the promissory note described in the foregoing, was, when the same was protested, and now is, really and bona fide, the property of the said Branch Bank. Given under my hand, this 22d day of November, 1845.

T. J. TOULMIN,
President.

Return of Sheriff.

Received, 25th August, 1845. Executed on the 13th October, 1845.

JOHN B. SAVAGE,
Sheriff.

And on the 25th day of November (1845), a regular day of said term, and the second day of said term, the following judgment was rendered in said cause.

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, at Mobile,
v.
JOHN D. BRACY, MARIA MATHERSON, and MELVILLE BRACY.

This day came the Branch of the Bank of the State of Alabama, at Mobile, by its attorney, and moved the Court now here, for judgment against John D. Bracy, Maria Matherson, and Melville Bracy, as makers of a certain promissory note, for the sum of 9065 dollars, made by them, dated at Clark County, on the 9th day of December, 1843, payable twelve months after date, to H. B. Holcombe, cashier, and negotiable and payable at the Branch of the Bank of the State of Alabama, at Mobile, which note is indorsed to the Branch of the Bank of the State of Alabama, at Mobile, was, at its maturity, presented to the said Branch Bank for payment, which was refused; and the said Branch of the Bank of the State of Alabama, at Mobile, here produces and shows the certificate of T. J. Toulmin, its President, that the said note is really and bona fide the property of the said Branch Bank; and it appearing, to the satisfaction of the said Court, that thirty days' notice of this motion has been given to the said defendants, and they saying nothing in bar or preclusion of the same, it is therefore considered, that the said Branch Bank recover against the said defendants, the sum of ten thousand four hundred and thirty-seven $\frac{20}{100}$ dollars, the amount of said note, and the interest and damages thereon, together with its costs in this behalf expended, for which execution may issue.

The State of Alabama, Mobile County.

I, Clement D. Wallace, Clerk of the Circuit Court of said County, do hereby certify, that the foregoing two $\frac{1}{4}$ pages contain a true and correct transcript of the record in the cause aforesaid, in said Circuit Court, at the term aforesaid, as the same doth remain on file in my office.

In testimony whereof, I hereunto set my hand and affix the seal official of said Court, this the 23d day of Sept. A. D. 1852.

C. D. WALLACE,
Clerk.

I, Lyman Gibbons, Judge of the Sixth Judicial Circuit of the State of Alabama (of which County of Mobile forms a part), do certify, that Clement D. Wallace, whose name appears to the foregoing certificate, is Clerk of the Circuit Court of said County of Mobile, and

was, at the time said certificate was signed by him; that his acts as such are entitled to full faith and credit, and that his foregoing attestation is in due form.

Given under my hand and seal at Chambers, in the City of Mobile, this, the 23d day of September, A. D. 1852.

LYMAN GIBBONS. [SEAL.]

John D. Bracy, Maria Matherson, Melville Bracy. Judgment
Circuit Court, Mobile County.

25th Nov., 1845, ...		$10,487 20
Interest to 17th June, 1848, . . .		2,148 70
		12,635 90
Cr. By cash, 17th June, 1848, . .	1,397 50	
Int. from 24th Oct., 1846, to 17 June, '48,	184 33	1,581 83
		11,054 07
Int. from 17th June, 1848, to 1st May, 1849, ...	768 86	768 86
		11,822 93
Cr. By cash, 1st May, 1849, . . .	1,401 80	
Int. from 24th Oct., 1846, to 1st May, 1849,	282 23	1,684 03
		10,138 90
Int'st from 1st May, 1849, to 27th Sept., 1852, ...		2,709 78
Amount due 27th Sept., 1852, . . .		$12,848 68

The estate of Jno. D. Bracy,
To the Branch of the Bank of the State of Alabama, at Mobile,

1852.	Dr.
Sept. 27. To amount due on judgment, as per statement made, ...	$12,848 68

The State of Alabama, Mobile County.

I, Henry B. Holcombe, assistant commissioner and chief executive officer of the Branch of the Bank of the State of Alabama, at Mobile, do state, on oath, that nothing has been paid or delivered to the satisfaction of the debt above stated and claimed, except what appears credited on the account within stated, and that the above balance of twelve thousand eight hundred and forty eight $\frac{68}{100}$ dollars, as above stated and demanded, is justly due.

HENRY B. HOLCOMBE.

Sworn to, and subscribed before me, Alexander McKinstry, Judge of the City Court of Mobile, in the State of Alabama, at Mobile, this 28th day of Sept. A. D. 1852.

ALEXANDER McKINSTRY, [SEAL.]
Judge.

The State of Alabama, Mobile County, to wit,

I, Reuben A. Lewis, Clerk of the City Court of Mobile, of said State and for said County, do hereby certify, that Alexander McKinsly, whose name appears upon and is subscribed to the annexed and foregoing affidavit for probate, is and was, at the date of his attestation to said probate, Judge of the said City Court of Mobile, in said State, in and for said County, duly commissioned, qualified, and acting as such according to the laws of the State of Alabama.

In testimony whereof, I have hereunto set my hand as such [SEAL.] clerk, and affixed the seal of the said Court, this day of September, A. D. 1852.

REUBEN A. LEWIS,
Clerk.

To Bracy McRea, as administrator of John D. Bracy, dec'd.

Sir:—Take notice, that the undersigned is the owner and holder of a claim and demand against the estate of your said intestate, founded upon a certain judgment, a true copy whereof, together with the amount due thereon, after deducting all credits, is hereto appended, and the said claim is hereby exhibited to you for your approval or rejection.

By J. M. CURRAN,
Attorney.

March 1st, 1853. Branch of the Bank of the State of Alabama, at Mobile.

The foregoing claim of the Branch of the Bank of the State of Alabama, at Mobile, was on this day exhibited to me for allowance, and I do hereby reject and refuse to allow the same, this day of April, 1853.

Rejected.

BRACY McRAE,
Administrator of John D. Bracy, dec'd.

In the Circuit Court of the United States for the Eastern District of Arkansas.

THE BRANCH BANK OF THE BANK OF THE STATE OF ALABAMA, at Mobile, Complainants,
v.
MARGARET McRAE and BRACY McRAE, as administrators of JOHN D. BRACY, deceased, Defendants.
} In Chancery.

Interrogatories to be propounded on the part of the said defen-

dants to David Maxwell, John W. Bond, Dandridge McRae, and others, as witnesses for taking depositions to be read as evidence in their behalf on the trial of the said cause.

First interrogatory. Do you, or not, know the names and description of certain slaves purchased, or said to have been purchased, by the defendant, Margaret McRae, from the said John D. Bracy, deceased, in White County, in the State of Arkansas, or when such purchase was made, or how long the said Margaret has been in the possession of said slaves, or any of them; and if so, what were the names of such slaves, and what was the character of the possession thereof, by the said Margaret, exclusive or jointly with others, or how?

Second interrogatory. Do you, or not, know of any payments made by the said Margaret, on such purchase, to the said John D. Bracy, or to his administrator, or to any other person, on account of the said John D. Bracy; and if so, how, when, and what were the amounts of such payments, and to whom, and what account were such payments made?

Third interrogatory. Do you know, or not, anything of the said Margaret McRae paying or not paying, delivering or not delivering, a number of bales of cotton to the said John D. Bracy, or to his administrator, or to any other person or firm, on account of the said John D., or of his administrator? If so, to and where were such bales of cotton delivered, and how many of them were there, and what was their value at the time of delivery?

Fourth interrogatory. Do you know anything about the said Margaret paying to Messrs. Bond & Maxwell, of Searcy, in said County of White, or to any other person or persons, any sum or amount for or on account of the said John D., or of his administrator, and on what account were such payments made, and to what amount?

Fifth and last interrogatory. Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the parties at issue in this suit, or either or any of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If so, set forth the same fully and at large in your answer to these interrogatories.

A. FOWLER,
Solicitor for the Defendant.

A Copy. Teste.
February 14th, 1854.

WM. FIELD,
Clerk.

As solicitors for complainant, we agree that defendants may take depositions on and according to the foregoing interrogatories, coupled with the cross-interrogatories herewith furnished, before Robert S. Bell, as Commissioner, by consent and without any order of Court

Sworn to, and subscribed before me, Alexander McKinstry, Judge of the City Court of Mobile, in the State of Alabama, at Mobile, this 28th day of Sept. A. D. 1852.

ALEXANDER McKINSTRY, [SEAL.]
Judge.

The State of Alabama, Mobile County, to wit,

I, Reuben A. Lewis, Clerk of the City Court of Mobile, of said State and for said County, do hereby certify, that Alexander McKinsly, whose name appears upon and is subscribed to the annexed and foregoing affidavit for probate, is and was, at the date of his attestation to said probate, Judge of the said City Court of Mobile, in said State, in and for said County, duly commissioned, qualified, and acting as such according to the laws of the State of Alabama.

In testimony whereof, I have hereunto set my hand as such [SEAL.] clerk, and affixed the seal of the said Court, this day of September, A. D. 1852.

REUBEN A. LEWIS,
Clerk.

To Bracy McRea, as administrator of John D. Bracy, dec'd.

Sir:—Take notice, that the undersigned is the owner and holder of a claim and demand against the estate of your said intestate, founded upon a certain judgment, a true copy whereof, together with the amount due thereon, after deducting all credits, is hereto appended, and the said claim is hereby exhibited to you for your approval or rejection.

By J. M. CURRAN,
Attorney.

March 1st, 1853. Branch of the Bank of the State of Alabama, at Mobile.

The foregoing claim of the Branch of the Bank of the State of Alabama, at Mobile, was on this day exhibited to me for allowance, and I do hereby reject and refuse to allow the same, this day of April, 1853.

Rejected.

BRACY McRAE,
Administrator of John D. Bracy, dec'd.

In the Circuit Court of the United States for the Eastern District of Arkansas.

THE BRANCH BANK OF THE BANK OF THE STATE OF ALABAMA, at Mobile, Complainants,
v.
MARGARET McRAE and BRACY McRAE, as administrators of JOHN D. BRACY, deceased, Defendants.
} In Chancery.

Interrogatories to be propounded on the part of the said defen-

dants to David Maxwell, John W. Bond, Dandridge McRae, and others, as witnesses for taking depositions to be read as evidence in their behalf on the trial of the said cause.

First interrogatory. Do you, or not, know the names and description of certain slaves purchased, or said to have been purchased, by the defendant, Margaret McRae, from the said John D. Bracy, deceased, in White County, in the State of Arkansas, or when such purchase was made, or how long the said Margaret has been in the possession of said slaves, or any of them; and if so, what were the names of such slaves, and what was the character of the possession thereof, by the said Margaret, exclusive or jointly with others, or how?

Second interrogatory. Do you, or not, know of any payments made by the said Margaret, on such purchase, to the said John D. Bracy, or to his administrator, or to any other person, on account of the said John D. Bracy; and if so, how, when, and what were the amounts of such payments, and to whom, and what account were such payments made?

Third interrogatory. Do you know, or not, anything of the said Margaret McRae paying or not paying, delivering or not delivering, a number of bales of cotton to the said John D. Bracy, or to his administrator, or to any other person or firm, on account of the said John D., or of his administrator? If so, to and where were such bales of cotton delivered, and how many of them were there, and what was their value at the time of delivery?

Fourth interrogatory. Do you know anything about the said Margaret paying to Messrs. Bond & Maxwell, of Searcy, in said County of White, or to any other person or persons, any sum or amount for or on account of the said John D., or of his administrator, and on what account were such payments made, and to what amount?

Fifth and last interrogatory. Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the parties at issue in this suit, or either or any of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If so, set forth the same fully and at large in your answer to these interrogatories.

A. FOWLER,
Solicitor for the Defendant.

A Copy. Teste.
February 14th, 1854.

WM. FIELD,
Clerk.

As solicitors for complainant, we agree that defendants may take depositions on and according to the foregoing interrogatories, coupled with the cross-interrogatories herewith furnished, before Robert S. Bell, as Commissioner, by consent and without any order of Court

thereto, and that a commission may issue to him for that purpose accordingly, hereby waiving all forms and any order of the Court or the Judges.

CURRAN & GALLAGHER,
Solicitors for Complainant.

A Copy. Teste,
February 14th, 1854.

WM. FIELD,
Clerk.

In the United States Circuit Court for the Eastern District of Arkansas. In Chancery.

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, at Mobile,
v.
MARGARET MCRAE, and BRACY MCRAE, Administrators of JOHN D. BRACY, deceased.
} In Chancery.

Cross-interrogatories, propounded by complainant, to David Maxwell, John W. Bond, and Dandridge McRae, witnesses examined on the part of the defendants.

1st. State the name, age, description, and present value of each of the slaves mentioned in your response to the 1st interrogatory in chief, and what each of said slaves would have hired for per annum at public auction in White County, since the same have been in possession of said Margaret McRae.

2d. When did John D. Bracy remove to said County of White? When were said slaves brought to White County? When did Margaret McRae remove to that County? Where did said John D., and said Margaret, respectively, reside when said sale took place, and where were said slaves at that time? Were not said slaves on the premises of said John D. at that time, and did they not remain on the same place until his death?

3d. Did not said Margaret, when she removed to White County, settle upon the same farm then occupied by the said John D., and has she not ever since resided on said farm? How long did said John D. and Margaret live together in said County? Who owns or occupies the plantation upon which the said D. resided at the time the said Margaret removed to said County; and who owns, claims, or occupies the plantation upon which they resided together in said County?

4th. Did not said John D. exercise control over said slaves after said Margaret removed to said County, and was it not generally understood in the community that said slaves belonged to said John D.? Was it generally known that he had sold them, until after his death? And was not said plantation generally known as his plantation?

5th. Do you know of said D. having paid any debts, or expended

any money after said sales? If so, state the amount of any such payments or expenditures.

6th. Was not said John D. an attorney-at-law, and was not his object, in leaving said plantation and removing to the town of Searcy, to open an office at that place, and follow his profession? Did he not spend a portion, and how much of his time, at said plantation with his sister, after he removed to Searcy? How far was said plantation from said town? Did not said John D. purchase supplies for said plantation and pay, or assume and contract to pay, for work and labor done, or material used, upon said plantation, after said Margaret removed to said County?

7th. Was not the grist-mill, cotton-gin, mules, oxen, wagon, and cattle intoried by the administrator of said John D. on said plantation at the time of his death?

8th. Is not said Dandridge McRea the son of said Margaret?

9th. Was not the cotton mentioned in your response to the third interrogatory in chief, raised upon the plantation above referred to?

10th. What was the amount of said debt to Messrs. Bond & Maxwell, for what was the same incurred, and was not the same, or the principal part thereof, and how much thereof, incurred on account and for the use of said plantation, and did not said John D. purchase supplies of said Bond & Maxwell, and others, for the use of said plantation or the slaves thereon, after said Margaret settled in said County? If so, state as near as you can the dates and amounts of any such purchases?

11th. Did not said John D. call on said David Maxwell to witness the sale or delivery of the slaves sold by him to said Margaret? If so, state everything that took place, and all that said John D. said in regard thereto? Did not said John D. request said Maxwell to accompany him to said plantation, for the purpose of witnessing said sale or delivery, and did not said John D. inform said Maxwell at that time that the debt of said Maxwell, and the debt of said Bond & Maxwell, should be paid, and that said sale should not affect his debts contracted in Arkansas, or something to that effect?

12th. David Maxwell will please state all that occurred at the time he was so called upon to witness said sale or delivery, and where he was when called upon for that purpose by said John D., and whether he did not accompany said John D. from thence to said plantation, and whether it was not early in the morning, and whether said John D. did not make some request, or intimate to the effect that he desired said sale to be kept secret? and what negroes were delivered in his presence, and how, and in what manner was such delivery made, and whether such delivery so witnessed by him did not take place on the farm or plantation then occupied by said John D., and whether all the slaves then on the place, or known by said Maxwell to belong to or be in possession of said John D., and whether he ever knew or heard of said John D. having any slaves in

said County of White, other than those so delivered in his presence to the agent of said Margaret? If nay, what became of the same? and whether said John D., at the time of said delivery, inform or give him to understand that his object in making said transfer was to prevent the slaves from being taken by his Alabama creditors?

13th, and last. State all you know in regard to said slaves, or the matters in issue in this suit.

CURRAN & GALLAGHER,
Solicitors for Complainant.

A Copy. Teste. WM. FIELD,
Clerk.

Depositions of witnesses, taken and subscribed before me, Robert S. Bell, special commissioner, appointed for that purpose by the Honorable the Circuit Court of the United States for the Eastern District of Arkansas, on the 8th day of April, A. D. 1854, between the hours of 9 A. M. and 6 P. M. of said days, as per adjournment, at the court-house in Searcy, White County, in the State of Arkansas, in pursuance to a commission and interrogatories hereto annexed, and to be read as evidence in a certain cause now pending in the said Circuit Court of the United States for the Eastern District of Arkansas, wherein the Branch Bank of the State of Alabama, at Mobile, is complainant, and Margaret McRae and Bracy McRae are administrators of John D. Bracy, deceased, are defendants.

Dandridge McRae, a witness, known to me to be of lawful age at the time, viz., the 8th day of April, A. D. 1854, and place aforesaid, produced, and, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy between the parties in the suit aforesaid, did then and there on his oath aforesaid depose as follows, to wit:

In answer to the first interrogatory, he says: That he knows the names and description of certain slaves purchased by Margaret McRae of John D. Bracy; that said slaves were represented as being in White County, Arkansas; the purchase of said slaves was made in Morehouse Parish, in Louisiana; said purchase was made some time in the fall of 1849. That the said Margaret McRae has had possession of said slaves for more than four years; the said Margaret had exclusive possession. The names of said slaves are Ben, Peggy, Betty, Juliett, Jose, Prince, Frank, Molly, Mary, Eliza, William, and some two or three children whose names I do not recollect.

In answer to the second interrogatory, he says: That all the payment made by the said Margaret McRae to the said John D. Bracy was two lots of cotton.

In answer to the third interrogatory, he says: That the said Margaret let the said John D. have first, as well as I recollect, either

twenty-five or twenty-seven bales of cotton, and at another time, to the best of my recollection, fifteen bales; as to the value, he says, he thinks it about twelve or thirteen hundred dollars.

In answer to the fourth interrogatory, he says: He knows not, except the aforesaid twenty-seven bales, which the said John D. turned over to Bond & Maxwell.

In answer to the fifth interrogatory, he says: That the said Margaret McRae has since the purchase of said slaves exercised exclusive control over them; that she has paid all charges and taxes on them; it was his understanding between the said Margaret and said John D., that said slaves were the property of the said Margaret.

In answer to the first cross-interrogatory, he says, that there is in the possession of the said Margaret the following negroes, which were purchased by her, from the said John D., to wit, Ben, aged about 60, worth about *about* $150; Peggy, aged about 60, worth about $50; Betty, 35, worth $600; Molly, aged 30, worth about $850; Prince, aged 15, worth $750; Frank, aged about 11, worth $600; Juliet, aged about 20, worth $800; William, about 8, worth about $500; Mary, about 7, worth about $450; Eliza, about 8, worth about $400; and some two or three children, whose ages, or description, or value, he knows not; as to the hire, he says, that he could not say what it would be; two of them are old, and the others, most of them, are women, with children.

In answer to the second cross-interrogatory, he says, he only knows from hearsay when the said John D. removed to Arkansas; nor does he know when said slaves were brought into Arkansas; he says, that the said Margaret removed into White County, as well as he recollects, in January, 1850; said Margaret, previous to removing to White, resided in Louisiana, where the sale of said negroes was made; he further says, that said John D. represented the negroes as being, at that time, in White County, Arkansas, and that he resided there; and, he further saith, that he came out to White County some time in December, 1849, with slaves of Margaret McRea; that the said slaves, purchased of the said John D., were in the possession of Bracy McRea, whom she had sent out some time in the fall; the place where the said Margaret settled was, at that time, Government land, which she entered, and where the said John D. resided, until some time before his death, probably about a year.

In answer to the third cross-interrogatory, he says, that the said Margaret did settle upon the place occupied by the said John D., and she has resided there ever since; said Margaret and said John D. resided together somewhere about two years; said Margaret owns the plantation on which they reside now.

In answer to the fourth cross-interrogatory, says, that said John D. exercised no more control over said slaves than he did, over only the other slaves belonging to the said Margaret. He further saith, that he thinks it was generally known, that the said Margaret had

purchased the said slaves, as they were taxed in the name of the said Margaret; as to the plantation, it was all entered in the name of the said Margaret, which, I think, was generally known.

In answer to the fifth cross-interrogatory, he says, that the said John D. purchased for the use of the said Margaret, one cotton-gin, one horse-mill, for which he became responsible; as to anything more, he says he knows not.

R. S. BELL,
Commissioner.

In answer to the sixth cross-interrogatory, he says, that the said D. was an attorney at law; his object in removing to Searcy was to follow his profession; he often went down to see his sister, the said Margaret; sometimes would stay several days at a time; said Margaret resided several miles from Searcy; said John D. did purchase supplies for said plantation; he transacted most of said Margaret's business for her; the agreement was, that she was to pay for all plantation supplies, individually, and for all work done upon it.

In answer to the seventh cross-interrogatory he saith, that the grist mill, cotton gin, some few cattle, and three of the mules were inventoried as the estate of the said John; the mules were in the possession of the said D. when this deponent came into White County; the gin and mill the said Margaret had got him to procure for her, and for which he became liable.

In answer to the eighth cross-interrogatory, this deponent says, he is a son of the said Margaret.

In answer to the ninth cross-interrogatory, he says, the cotton referred was raised on the plantation referred to.

In answer to the tenth cross-interrogatory he says, the debt to Messrs. Bond & Maxwell was about one thousand dollars. For what it was created he says he cannot positively say; but in the settlement between the said Margaret and Bond & Maxwell, it was agreed that whatever he had obtained of them for the plantation she was to assume, and to the best of my did assume; said John D. was largely indebted to Bond & Maxwell previous to the removal of said Margaret.

In answer to the eleventh cross-interrogatory he says, he knows not, only from what he has heard.

In answer to the twelfth cross-interrogatory he says, he knows not only from hearsay.

In answer to the thirteenth cross-interrogatory he says, that some time in the fall of 1849 the said John D. came into Morehouse Parish, Louisiana; he was anxious for the said Margaret to remove into Arkansas; he also offered to sell her his negroes, which she bought. She sent her son, Bracy McRae, to receive said slaves of the said John D. In December, this defendant removed the slaves of the said Margaret (those she had in Louisiana) into the County of

White, Arkansas, to a place where Bracy McRae and the said John T. were residing; the place was a small improvement upon the public land; the said Margaret come out in January, I think; on or about that time. She entered the land upon which was the improvement, and cleared up a plantation; the said John D. resided with her some considerable time; I think looked upon the house of the said Margaret as his home; he transacted most of her business for her; the agreement was, that whatever he purchased for the use of the place she was to pay for; not long before his death he had become liable individually for a cotton gin and mill, which had not been paid for; the administrator inventoried them, and sold them as his property; the agreement between Maxwell & Bond was to charge all that the said John D. had purchased to her; further this deponent saith not.

DANDRIDGE McRAE.

R. S. BELL,
Commissioner.

At the same time and place appeared John W. Bond, a witness known to me to be of lawful age, and thereupon the further taking of depositions is adjourned to Thursday next, April the 13th, A. D. 1854, at ten o'clock, A. M.

R. S. BELL,
Commissioner.

R. S. Bell, Commissioner.

Thursday morning, April 13th, 1854, 10 o'clock, A. M., the commission was again opened, and the taking testimony thereunder resumed, in accordance with the adjournment; and thereupon personally appeared before me the above-named John W. Bond, witness as aforesaid, who, after being duly sworn to testify the truth, the whole truth, and nothing but the truth, in regard the matters in controversy between the parties to this suit, deposes and says, in answer to interrogatory No. One, as follows, to wit:

The negroes were men, women, and children. Mrs. McRae, of the defendants, has had the possession of the negroes since 1849. I do not know the names of many of them. All I recollect the names of are, Ben, Molly, Prince, Frank. I do not the character of the possession.

Interrogatory to second, he answers. I do not know of any payments made by the said Margaret, except some twenty-five or twenty-seven bales of cotton, delivered to Bond & Maxwell by the said Margaret, in the year 1851.

Answer to interrogatory third. The cotton, in answer to the second interrogatory, is all that I know of.

To interrogatory the fourth. The twenty-five or twenty-seven bales of cotton is all to my knowledge.

To interrogatory the fifth he answers. I know nothing more than I have stated above, only that Mrs. Margaret McRae has exercised ownership and claimed the said negroes for several years prior to the death of John D. Bracy. I know nothing of the nature of her

title. Have seen a bill of sale from the said John D. to the said Margaret. Do not recollect the date thereof.

Cross-interrogatories propounded by the complainant.

In answer to cross-interrogatory first. The negroes consist of men, women, and children. Do not know anything about their value. Do not know how much they would hire for per annum.

Answer to cross-interrogatory second. John D. Bracy settled in White County in the year 1848. I think he brought the slaves with him. Margaret McRae, as well as I can recollect, came to White County in 1849 or 1850, in the spring of the year. I know little or nothing about the sale of the negroes. Was not present, and only heard that the sale was made in 1849. John D. Bracy resided in White County at that time. Do not know where the said Margaret resided at the time. The slaves were in White County at the time I heard the sale took place. Do not know to whom the premises belonged when the sale was made, but the negroes remained on the place on which the said John D. first settled on moving to White County, and were there when he died. The said Margaret, however, took possession of the premises when she first moved to the County of White.

Answer to cross-interrogatory third. Said Margaret settled upon the premises occupied by the said John D., when she came to White County, and has resided there ever since; said John D. and Margaret lived together probably some 12 or 18 months in White County.

R. S. BELL,
Commissioner.

The said Margaret occupies the plantation upon which the said John D. resided upon, at the time she came to White County; said Margaret owns and occupies the plantation.

To fourth cross-interrogatory. I do not know that said John D. controlled particularly those negroes, than others upon the premises. I believe, however, that the impression was that they belonged to the said John D., by the community; I do not know that it was generally known that the said John D. had sold the negroes until after his death; the plantation was known as belonging to the said Margaret, after she came to the County.

To cross-interrogatory fifth. I do not know of his having paid any money.

To cross-interrogatory sixth. Said John D. was an attorney at law. I suppose he came to Searcy to practise law, and he followed that profession; he remained at Searcy most of his time, spent very little of it elsewhere; said plantation is about six miles from town; said John D. often bought supplies for the plantation, but had them charged to said Margaret; do not know of his having paid for any labor done for the plantation, or for any materials for its use, after the said Margaret moved to the County.

Cross-interrogatory eighth. Dandridge McRae is the son of Margaret McRae.

Cross-interrogatory ninth. The cotton was raised upon the plantation referred to.

Cross-interrogatory tenth. I do not know to what debt you allude. The said John D., at the time of his death, was indebted to Bond and Maxwell upwards of $1200, which was for merchandise, money loaned, &c., and I believe in that sum a blacksmith's account and some land rent was included. I, however, would not be positive that such was the fact; said John D. often purchased goods of us (Bond and Maxwell) for slaves, but had them charged to the said Margaret, after she settled in White County.

Cross-interrogatory eleventh. I know nothing of the transaction; and further this deponent saith not.

J. W. BOND.

R. S. BELL,
Commissioner.

State of Arkansas. County of White, *ss.*

I, Robert S. Bell, special commissioner, appointed by the Honorable the Circuit Court of the United States, for the Eastern District of Arkansas, do hereby certify and make known, that the foregoing depositions of Dandridge McRae and John A. Bond, were taken before me, on the 8th and 13th days of April, A. D. 1854, between the hours and at the place in the caption hereof above-mentioned; that the examinations, responses, and statements of each of said deponents were reduced to writing in my presence, and by the said deponents respectively sworn to, and subscribed in my presence, at the time and place aforesaid; and that said deponents are residents of White County in the State of Arkansas.

In testimony whereof, I do hereunto set my hand as commissioner as aforesaid, at the town of Searcy, in the County of White, in the State of Arkansas, this 13th day of April, A. D. 1854.

R. S. BELL,
Commissioner.

Opened and filed 25th April, 1854.

WM. FIELD,
Clerk.

State of Arkansas, County of Clark.

It being represented to me, H. W. Coate, sole presiding Judge of the Probate Court of Clark County, in the State of Alabama, that the testimony of Melville Bracy and William A. Matherson, is necessary to the defendants, in a certain civil cause depending in the Circuit Court of the United States for the Eastern District of Arkansas, at Little Rock, the place of trial, in which cause, the Branch of the Bank of the State of Alabama is complainant, and Margaret McRae

and Bracy McRae, as administrators of John D. Bracy, deceased, are defendants, in Chancery, and which said Melville Bracy and William A. Matherson, live at a greater distance from the said place of trial than one hundred miles; and the said Melville Bracy being produced to me, H. W. Coate, Judge as aforesaid, on the 24th day of February, 1855, at the residence of Maria Matherson, in the County of Clark, in the State of Alabama, and the said Melville Bracy being by me first lawfully examined, cautioned, and sworn to testify the whole truth in relation to the matters in controversy in the said cause, did then and there depose and say: The Bank of the State of Alabama, at Mobile, obtained a judgment in the Circuit Court of Mobile County, on or about the 25th of November, 1845, for $10,487$\frac{80}{100}$ against John D. Bracy, Maria Matherson, and Melville Bracy; Maria Matherson and Melville Bracy were security for the said John D. Bracy, on the debts for which the said judgment was obtained; and the said John D. Bracy, to secure the said Maria Matherson from embarrassment, on account of the said judgment, executed a deed of trust to one Billups Gayle, as trustee, for the use and benefit of the said Maria Matherson, which deed of trust was executed about the 7th day of June, 1844, and included in it certain negroes, horses, mules, and other property. Said John D. Bracy left this State about the year 1846, and took with him part of the said property. When the said John D. Bracy went away he owned a plantation containing about one thousand acres of land, situated on the Tombigbee River, which was worth ten thousand dollars; he also left some other property, together with some of the negroes included in said trust, which he directed to be appropriated to the payment of the said Bank judgment, and he informed the said Bank, that he had left sufficient property to pay off the said judgment. Billups Gayle, who was the trustee aforesaid, knows when the said John D. went away with his property, advised him to go, and made no objection whatever; nor did the said Maria Matherson object at the time, so far as I know or have heard. Said John D. Bracy returned to this State the following year, and remained several months among his relations and friends, and went away again about the year 1847. I understand that some time after John D. Bracy left here, he sold all of his negroes to a gentleman near Vicksburg, in Mississippi, and being dissatisfied with the sale, gave two of his most valuable negroes to get the property back; and I also understand, that four of his best negro men died with the pneumonia, and that several others died since he went to Arkansas.

M. BRACY.

Witness: H. W. COUTE.

And the said William A. Matherson, being produced to me, H. W. Coute, Judge as aforesaid, on the 24th day of February, A. D. 1855, at the residence of Maria Matherson, in the County of Clark, in

the State of Alabama; and the said William A. Matherson, being by me first carefully examined, cautioned, and sworn, to testify the whole truth, in relation to the matters in controversy in the said cause, did then and there depose and say: I knew John D. Bracy in his lifetime; the Branch Bank of the State of Alabama, at Mobile, and the Bank of Mobile, held his two several notes, upon which Maria Matherson, my mother, was security for him. In order to secure my mother against the same, the said John D. Bracy, on the 7th day of June, 1844, executed a deed of trust to Billups Gayle, as trustee, for the use, benefit, and protection, of my mother, Maria Matherson. I was one of the subscribing witnesses to the said trust deed. The Bank, the complainant, subsequently obtained a judgment upon the said debt, for the balance unpaid, amounting to about ten thousand dollars, or upwards, against John D. Bracy, my mother (Maria Matherson), and Melville Bracy; when said John D. Bracy was desirous to change his place of residence in 1846—I think it was 1846. Billups Gayle, the said trustee, was with him, and advised him to leave this country, and take the property included in the said trust, with him; and my mother, who was the person for whose benefit the trust aforesaid was made, interposed no objection. Said John D. lived with my mother at the time; said John D. Bracy left a plantation in Clark County, Alabama, worth about ten thousand dollars, and he also left negroes and some other property which was included in said deed of trust, which I understood was to be applied to the payment of the said Bank debt. The Bank aforesaid, I understood, took the plantation aforesaid; said John D. Bracy went from here to Mississippi. I was with him when he started; he took a steamboat at his own plantation, on the Tombigbee River; took his property aboard, and went up the river; he returned here the next year, say 1847, and remained here several months, principally in this county, and returned in 1847 to Mississippi; since which time I have not seen him, but understood that he went from Mississippi to Louisiana, and from there to Arkansas, where he died. Isabella, Charlotte, Tom, Joe, and Morning, were some of the negroes left here by said John D., besides the ones that were sold under the trust.

W. A. MATHERSON.

H. W. COATE,
Judge Probate Court.

And I do further certify that the said Melville Bracy and William A. Matherson, so deposing as aforesaid, did subscribe the foregoing testimony and deposition by the so given as aforesaid above, after it was reduced to writing by me, H. W. Coate, in his and my presence. And I do further certify that I am not of counsel or attorney to either of the parties of said cause, or interested in the event of the said cause; and that I served or caused to be served on the said

complainant no notification to be present at the taking of the said deposition, or upon her attorney, as neither of them, to the best of my knowledge, information, and belief, is or was, at the time of taking the same, within one hundred miles of the place of taking said depositions.

[L. S.] Given under my hand and seal, and seal of office, this 24th day of February, A. D. 1855.

H. W. COATE, [SEAL.]
Judge of the Probate Court of Clark County, Alabama.

Opened and filed, 4th May, 1855.

WM. FIELD,
Clerk.

United States Circuit Court for the Eastern District of Arkansas, on the Chancery side thereof. In vacation, before the Clerk of said Court, on the 15th day of February, A. D. 1854, the following proceeding were had, to wit:

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, at Mobile, Complainant,
v.
MARGARET MCREA and BRACY MCREA, as administrators of JOHN D. BRACY, deceased, Defendants.
} In Chancery.

This day came the parties, by their solicitors, and filed their interrogatories and cross-interrogatories, and the agreement and consent of the defendants that Commissioners should be appointed in the State of Alabama to take the depositions of witnesses on behalf of said complainant, in this cause. Whereupon George Conway or Sidney T. Douglass, of the County of Mobile, were appointed and commissioned for that purpose; and Isaac W. Lenoir and N. H. R. Dawson, of Clark County, Alabama, were appointed and commissioned for that purpose, or either of them, to take depositions on the part of said complainant.

Attest, WM. FIELD,
Clerk.

The United States of America, Eastern District of Arkansas, *set.*

In the Circuit Court of the United States, for the Eastern District of Arkansas.

The President of the United States of America, to George Conway or Sydney T. Douglass, of the County of Mobile, or State of Alabama, greeting:

Whereas, in the suit in Chancery, now pending at our Circuit Court of the United States, for the District aforesaid, wherein the

Branch of the Bank of the State of Alabama, at Mobile, is complainant, and Margaret McRea and Bracy McRea, are as administrators of John D. Bracy, deceased, are defendants, by consent and agreement of the parties, you or either of you, are hereby appointed Commissioners of this Court in that behalf, to take the deposition of witnesses herein and hereafter named, upon the interrogatories and cross-interrogatories filed in the cause, a copy of which are hereto attached.

You, or either of you, are, therefore, required to cause to come, before, at such times and places as you shall appoint, the following named witnesses on the part of said complainant, to wit, R. D. James, F. S. Blount, and Henry B. Holcombe; and that you, there and then, examine them upon their corporal oaths, first taken before you upon the Holy Evangelists; and to reduce their said examinations and answers to said interrogatories and cross-interrogatories to writing; and that when you have so taken their testimony, that you send the same, with this commission, closed up under your seal, to our said Circuit Court, at the City of Little Rock, without delay.

In testimony whereof, Roger B. Taney, Esq., Chief Justice of the United States, hath caused the seal of said [SEAL.] Circuit Court to be hereto attached, this 15th day of February, A. D. 1854, and in the 78th year of our independence.

Attest, WM. FIELD,
Clerk.

In the Circuit Court of the United in and for the Eastern District of the State of Arkansas. In Chancery sitting.

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, at Mobile, Complainant,
v.
MARGARET MCREA and BRACY MCREA, as administrators of JOHN D. BRACY, deceased, Defendants.

Interrogatories to be propounded to R. D. James, F. S. Blount, and Henry B. Holcombe, witnesses on the part of Complainant.

Interrogatory First. State if you, or either of the parties to this suit, or any of them; and if so, state all you know about them, or either of them, together with your means of information?

Interrogatory Second. State if you or either of you, knew one John D. Bracy in his lifetime; and if you knew him in Alabama, where, and how long; when he left Alabama, and under what circumstances he left?

Interrogatory Third. State if you knew of any indebtedness of the said John D. Bracy, in his lifetime, to complainant; and if so,

state fully and positively all you know concerning the same, and whether the same has been paid or not?

Interrogatory Fourth. Do you know anything about John D. Bracy, in his lifetime, having executed any mortgage or deed of trust to Maria Matherson; and if so, if there was any trustee; who he was; what has become of him; what was the consideration of said mortgage, and what property was mortgaged; and where the property was at the time of the execution of the mortgage; and whether any, and which, of the debts mentioned in such deed have been?

Interrogatory Fifth. State, if you know, whether John D. Bracy, Maria Matherson, and Margaret McRea were related; and if so, in what degree; and how far they resided from each other when you knew them, and when it was?

Interrogatory Sixth. State whether if there was any mortgage or deed of trust, as above stated; what has become of the property mentioned in said mortgage.

Interrogatory Seventh. State whether John D. Bracy ever resided in Alabama; if so, when, and under what circumstances did he leave there?

Lastly. Do you know, or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, on the matters in question in the cause? If yea, set forth the same, fully and at large, in your answer.

CURRAN & GALLAGHER,
Solicitors for Complainant.

As solicitor for the defendant, I agree that the said complainant may take the depositions of the witnesses named in the annexed and foregoing interrogatories, eight in number; and be taken on and thereunder be coupled with the four cross-interrogatories propounded by the said defendants, herewith furnished, before George Conway or Sydney F. Douglass, as Commissioners, by consent and without any order or rule of Court, or of the Judge; and without any such order or appointment, a commission may issue to him, or either, or both of them, as such Commissioners for that purpose, and depositions taken thereby, waiving all form, and the necessity of such order or appointment.

A. FOWLER,
Solicitor for Complainant.

A true copy. Attest, WM. FIELD,
Little Rock, February 14th, 1854. Clerk.

In the Circuit Court of the United States, for the Eastern District of Arkansas.

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, at Mobile, Complainant,
v.
MARGARET MCREA and BRACY MCREA, as administrators of JOHN D. BRACY, deceased, Defendants.

Cross-interrogatories, to be propounded to R. D. James, F. S. Blount, and Henry B. Holcombe, witnesses to be produced on the part of the complainant.

First cross-interrogatory. State who paid the said debt mentioned in said interrogatories, whether the said Maria Matherson, John D. Bracy, or if not of them, who paid it, or how much, or when?

Second cross-interrogatory. Do you not know that the said John D. Bracy, before he left the State of Alabama, delivered up to be sold a number of the said slaves, mentioned in the said mortgage or deed of trust, and that the same were sold for the satisfaction thereof? And if so, what was the amount of the proceeds of such sale?

Third cross-interrogatory. Do you not know that when said John D. Bracy left the State of Alabama it was with the knowledge, consent, and permission of said plaintiff, or of her agents and attorney, and of the said Billups Gayle as such trustee, and of the said Maria Matherson, or some of them, or that they, or one or more of them, knew where the said John D. Bracy removed to, and where he resided from and after the time of his removing from the said State of Alabama? State all you know about the several matters inquired of by this interrogatory, and each and every part thereof?

Fourth and last cross-interrogatory. Do you know, or can you state any other matter or thing which may be of any benefit or advantage to the parties of this suit, or that may be material to the subject of this, your examination, on the matters in question in this suit? If so, state the same fully and at large in your answer?

A. FOWLER,
Solicitor for Defendants.

A true copy. Attest, WM. FIELD,
Clerk.

Pending in the Circuit Court of the United States, for the Eastern District of Arkansas.

THE BRANCH OF THE *of the* STATE OF ALABAMA, at Mobile,
v.
MARGARET MCRAE and BRACY MCRAE, administrator and administratrix of JOHN D. BRACY, deceased.

Depositions of witnesses, sworn and examined at the office of George

Conway, on the 29th day of March, 1854, by virtue of the next consent rule and commission empowering me to take the testimony, waiving all form, &c.

Henry B. Holcombe, of Mobile, Alabama, is personally known to me, being first duly sworn upon the Holy Evangelists of Almighty God, doth depose and say, as follows:

1st. To the first interrogatory he answers. I did not know John D. Bracy personally, or either of the other defendants. The plaintiff is a corporation located in the City of Mobile, under a charter from the State of Alabama.

2d. To the second interrogatory he answers. I did not know John D. Bracy personally, or either of the other defendants.

3d. To the third interrogatory he answers. I know of a debt of John D. Bracy to the Branch of the Bank of the State of Alabama, at Mobile. Said Branch Bank held a judgment, obtained in the Circuit Court of Mobile County, dated 25th November, 1845, for ten thousand four hundred and eighty-seven $\frac{80}{100}$ dollars, against John D. Bracy, Maria Matherson, and Melville Bracy, on a note discounted by the Bank. There has been a part of said debt paid, to wit, on the 17th of June, 1848, there was paid on said debt thirteen hundred and ninety-seven $\frac{50}{100}$ dollars; and on the 1st May, 1849, there was fourteen hundred and one $\frac{80}{100}$ dollars paid to said Bank. A transcript of this judgment and claim, shortly before the commencement of this suit, sent on to Little Rock for collection, by direction of T. S. Lyon, commissioner and trustee of said Bank.

4th. To the fourth interrogatory he answers. The Branch Bank at Mobile (the complainant) held a deed in trust, dated 7th June, 1844, executed by John D. Bracy to Billups Gayle, as trustee. Deponent does not know where the said Billups Gayle now is, but believes him to be dead. He formerly resided in Clark County. Deponent does not know what was the consideration, other than appears upon the face of the deed. The property consisted of thirty-three negroes, two wagons, six mules, three horses, and sixty hogs. The property was in Clark County. A portion of the debt for which the property was mortgaged has been paid, as stated in my answer to the third interrogatory. The Bank is not in the possession of the original trust deed, but has a copy on its books. The deed is supposed to be in the possession of Billups Gayle, or his administrators. But the Bank's rights under such mortgage, nor the negroes therein named, have never been in any way released.

5th. To the fifth interrogatory he answers. Deponent does not know the relationship between the parties, nor does he know the distance between their respective residences.

6th. To the sixth interrogatory he answers. Deponent believes that the property, or a large portion of it, was carried out of this State by John D. Bracy, to avoid the payment of the debt the mortgage was designed to secure.

7th. To the seventh interrogatory he answers. Deponent believes that John D. Bracy resided in Clark County, Alabama, and that some time about the year he left the State with the property embraced in the mortgage, as deponent is informed and believes, to avoid the payment of the debt, or to prevent the sale and seizure of the property. The Bank did not know or have any information of John D. Bracy's location after he left Alabama, until a few months before this claim was forwarded to Arkansas for suit. He left this State, and took the mortgaged property without the knowledge or assent of the Bank, or any of its officers, as far as this deponent knows.

8th. To the eighth interrogatory he answers. Deponent knows that the Branch of the Bank of the State of Alabama, at Mobile, was chartered by the Legislature in 1832 or 33; that said Bank went into operation as a corporation, exercising all the powers and functions of a Bank. That it continued to do business as a Bank from that time, and that deponent was elected cashier of the Bank shortly after the act was passed, placing it in liquidation in 1843—say in May, 1843—and he continued in that office up to 1846, when he was elected assistant commissioner, which office he now holds under the appointment of the commissioner and trustee. That he has no interest in the matter, and if his name appears on the note, it is only as cashier or officer of the Bank.

HENRY C. HOLCOMBE.

Subscribed and sworn to, before me, this 27th March, 1854.

GEORGE CONWAY,
Commissioner.

Cross-interrogatories to H. B. Holcombe.

1st. To the first cross-interrogatory he answers. The sums paid upon the debt, as stated in my answer to the third direct interrogatory, was realized from sales of a portion of the negroes claimed by B. Gayle, trustee, and sold. The money was paid to the Bank by the attorney of the Bank, who received it from B. Gayle, trustee; the amount paid and when is stated in my answer to the third direct interrogatory, to which I refer as a part of my answer to this interrogatory.

2d. To the second cross-interrogatory he answers. That deponent understood that the negroes which were sold, from which the payments alluded to on the debt, as stated in his answer to the third interrogatory, were carried out of the State, but by some means were found in the State afterwards. The amount of the sale of the negroes was, as reported to the Bank, the sum of twenty-nine hundred and fifty dollars; and after the deduction of the charges, left the sum as stated in answer to third direct interrogatory as the proceeds due to it from said sale.

3d. To the third cross-interrogatory he answers. Deponent has

no information upon the points alluded to, going to show that the said Bracy left the State with the approbation of said parties. Deponent has no knowledge that the destination of the said Bracy was known to the said parties named.

4th. To the fourth cross-interrogatory he answers. Deponent has stated all that he knows in relation to the matters alluded to.

HENRY B. HOLCOMBE.

Subscribed and sworn to, before me, this 29th day of March, 1854.

GEORGE CONWAY,
Commissioner.

Frederick S. Blount, of Mobile County, being first duly sworn upon the Holy Evangelists of Almighty God, doth depose and say as follows:

1st. To the first interrogatory he says: He knows all the parties; has known the Bank since its establishment in Mobile; Mrs. McRae since about 1835, and Bracy McRae from his infancy.

2d. To the second interrogatory he answers: I knew John D. Bracy since 1835, in Alabama, up to the time he left; was not with him at or near the time he left; and of my own knowledge do not know the circumstances under which he left. It was generally understood by his friends, and the people of his neighborhood, that he left secretly to avoid the property he took with him from being taken for his debts; and I never heard this contradicted.

3d. To the third interrogatory, he answered: I have seen judgments and executions in favor of complainant, but know nothing of the payment. John D. Bracy left Alabama in 1845 or 1846.

4th. To the fourth. I have heard of such a mortgage, but having no recollection of having seen it; know nothing of the other questions in this interrogatory.

5th. To the fifth interrogatory, he answers: Maria Matherson was the mother, and Margaret McRae the sister, of John D. Bracy. They resided about ten miles from Mrs. McRae. I have known Mrs. Matherson since 1835; and up to the time Mr. Bracy left the State, unless temporarily absent, he lived about ten miles from Mrs. McRae.

John D. Bracy resided in Clark County, Alabama, and his negroes resided in that County on the 7th June, 1844, and for some years before that, and until 1846, when he left this State.

6th. To the sixth interrogatory, he answers: John D. Bracy carried all the property, so far as witness knows, which he had in possession, with him from the State of Alabama. His location, when he left here, was unknown to his friends here until about twelve months since.

7th. To the seventh interrogatory, refer to answer *to answer* in second interrogatory.

8th. To the eighth, he says: Knows nothing more.

F. S. BLOUNT.

Subscribed and sworn to before me, this 27th March, 1854.

GEORGE S. CONWAY,
Commissioner.

Cross-interrogatories:

1st. To first cross-interrogatory, says: Knows nothing contained in this.

2d. To second cross-interrogatory, he says: Knows nothing.

3d. To third cross-interrogatory, he says: Knows nothing.

4th. To fourth cross-interrogatory, he says: Knows nothing.

F. J. BLOUNT.

Subscribed and sworn to before me, this 27th March, 1854.

GEORGE CONWAY,
Commissioner.

The State of Alabama, Mobile County.

I, George Conway, one of the commissioners of the annexed commission, hereby certify, that I caused the witnesses, Henry B. Holcombe and Frederick S. Blount, to appear before me, at my office in the City of Mobile, on this 29th day of March, A. D. 1854, that they were duly sworn by me, that they testified as set down, that their testimony was by me reduced to writing in their presence, and subscribed and sworn to by them, in my presence, after its first having been read over to them; and that counsel for both sides were not present at such examination.

In witness whereof, I have hereunto set my hand and seal, at Mobile, Ala., this 29th day of March, A. D. 1854.

GEORGE CONWAY, [SEAL.]
Commissioner.

MOBILE, ALA.

Opened and filed, 25th April, 1854.

WM. FIELD,
Clerk.

State of Alabama, Mobile County, *ss.*

I, George S. Conway, one of the commissioners in the annexed commission, hereby certify, that I caused the witnesses, Henry B. Holcombe and Frederick S. Blount, to come before me at my office, in the City of Mobile, on this 29th day of March, A. D. 1854, that they were duly sworn by me, that they testified as set down, that their testimony was by me reduced to writing in their presence, and subscribed and sworn to by them, in my presence, after its first having been read over to them; and that counsel for both sides were not present at such examination.

In witness whereof, I have hereunto set my hand and seal, at Mobile, Ala., this 29th day of March, A. D. 1854.

GEORGE CONWAY, [SEAL.]
Commissioner.

MOBILE, ALA.,

Opened and filed, 25th April, 1854.

WM. FIELD.
Clerk.

In the Circuit Court of the United States for the Eastern District of Arkansas.

Appeal to the Supreme Court of the United States.

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, at Mobile, Complainant,
v.
MARGARET MCRAE, and BRACY MCRAE, as Administrator of JOHN D. BRACY, deceased, Defendants.
} In Chancery.

Know all men by these presents, that we, Margaret McRae, as principal, and David Maxwell, John W. Bond, Fielding Price, and Jesse S. Tilman, as sureties, are held and firmly bound unto the above-named Branch of the Bank of the State of Alabama, at Mobile, in the sum of ten thousand dollars, lawful money of the United States, for the payment whereof well and truly to be made to the said Branch of the Bank of the State of Alabama, or her assigns, we bind ourselves and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals, this 27th day of October, A. D. 1855.

The condition of the above obligation is such, that whereas the said Margaret McRae, as well as the said Bracy McRae, as such administrator, have taken an appeal to the Supreme Court of the United States, from and to reverse the decree rendered in the above submitted suit, by the Circuit Court of the United States for the Eastern District of Arkansas. Now, therefore, if the said appellants shall prosecute their said appeal with effect, and answer all damages and costs if they fail to make good their said appeal, then this obligation shall be void, else remain in full force and virtue.

MARGARET MCRAE, [SEAL.]
D. MAXWELL, [SEAL.]
J. W. BOND, [SEAL.]
FIELDING PRICE, [SEAL.]
JESSE S. TILLMAN. [SEAL.]

Signed, sealed, &c., in presence of us,

D. MCRAE,
J. D. ROBBINS.

I hereby approve the within and foregoing bond, the sureties therein named, from information satisfactory to me, appearing to possess ample means to pay the amount of penalty in said bond specified. This 31st day of October, A. D. 1855.

DANIEL RINGO,
U. S. Judge, for the Arkansas District.

Filed, 1st November, 1855.
Attest, WM. FIELD,
Clerk.

The United States of America, Eastern District of Arkansas, *ss.*

The President of the United States, To Robert S. Bell, Esquire, of the County of White, in the State of Arkansas, greeting:

Whereas, in the suit of the Branch Bank of the Bank of the State of Alabama, at Mobile, against Margaret McRae and Bracy McRae, as administrators of John D. Bracy, deceased, in our Circuit Court of the United States, for the Eastern District of Arkansas, on the Chancery side of said Court, you (by consent and adjustment of the parties) are hereby appointed a commissioner of our said Court, to take the depositions of David Maxwell, *David Maxwell*, John W. Bond, Dandridge McRae, and others, witnesses on the part of said defendants, upon interrogatories and cross-interrogatories filed in the cause.

You are therefore required to cause to come before you, at such time and place as you shall appoint, the witnesses aforesaid on the part of said defendants; and that you, then and there, examine them apart, upon their respective corporeal oaths first taken before you upon the Holy Evangelists, and that you reduce their examinations to writing, and when you shall have so taken them, that you send the same, with this commission, closed up under your seal, to our said Court, at the City of Little Rock, without delay.

[SEAL.] In testimony whereof, Roger B. Taney, Chief Justice of the United States, hath caused the seal of said Circuit Court to be hereto affixed, this 8th day of March, A. D. 1854.

Attest, WM. FIELD,
Clerk.

John D. Bracy to B. Gayle. Deed of Trust.

This indenture, made this the seventh day of June, in the year of our Lord one thousand eight hundred forty-four, between John D. Bracy, party of the first part, Billups Gayle, party of the second part, and Maria Matherson, party of the third part, all of the County of Clark, in the State of Alabama, witnesseth, that the said party of the first part, for and in consideration of the sum of ten dollars, good and lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and other good and lawful considerations hereinafter expressed, hath granted, bargained, sold, conveyed, and confirmed, and by these presents does grant, bargain, sell, convey, and confirm unto the said party of the second part the following described negroes, to wit: Prince, aged about fifty; Christian, aged forty-five; Fanny, aged about nineteen; Molly, aged about sixteen; Mary, aged about

eighteen months; Prince, aged about four years; Frank, aged about two years; Peggy, aged about fifty years; Charlotte, aged about thirty years; Betty, aged about twenty-five years; Millison, aged about twenty-two years; Josey, aged about nineteen years; Julia, aged about thirteen years; Bella, aged sixty years; Morning, aged about sixty years; Tom, aged about fifty-five years; Joe, aged about twenty-one years; Primus, aged about sixty years; Love, aged about fifty-five years; Sam, aged about fifty-five years; Lydia, aged about fifty years; Nat, aged about thirty years; Delia, aged about twenty-five years; Nora, aged about fifteen years; Peggy, aged about thirteen years; Cain, aged about forty years; January, aged about six years; Ransum, aged about four years; Elsey, aged about thirty-five years; Chaney, aged about thirteen years; Anna, aged *aged* about eleven years. Also two plantation wagons, six mules, three horses, and sixty head of hogs; together with all and singular the interest, right, claim, and issue thereupon. This indenture, made to the said party of the second part, in trust for the following purposes, to wit: as a security and indemnity to the said party of the third part, who is security on two promissory notes, to wit: one of said promissory notes is held by the President and Directors of the Branch of the Bank of the State of Alabama, at Mobile, of which the following is a copy, to wit: "Clark County, 9th December, 1843. Dollars 9065. Twelve months after date, we jointly and severally promise to pay Henry B. Holcomb, Cashier, or bearer, nine thousand and sixty-five dollars, with interest from date, for value received, negotiable and payable at the Branch of the Bank of the State of Alabama, at Mobile.

(Signed) JOHN D. BRACY,
MELVILLE BRACY,
MARIA MATHERSON.

And the other of said two promissory notes is held by the Bank of Mobile, and of which the following is a copy, "Mobile, April 16th, 1844, $2574 50. On the first day of December next, we, or either of us, promise to pay to the order of the president and directors and company of the Bank of Mobile, two thousand five hundred and seventy-four dollars and fifty cents, value received, negotiable and payable at the Bank of Mobile.

Signed, "J. DORRINGTON,
"JOHN D. BRACY,
"MARIA MATHERSON."

Now if the said party of the first part shall well and truly pay, or cause to be paid, the two above-described notes at maturity, then these presents, and all herein contained, shall be null and void; but in case of the non-payment of said notes as aforesaid, then this indenture to remain in full force and effect, and the said party of the

second part, at the request of the said Maria Matherson, is hereby fully authorized and empowered to take the said negro slaves, wagons, mules, horses, and hogs, into her possession, and after giving thirty days' previous notice of the sale, at a sufficient number of public places in the County of Clark, to sell all, or so much of said negroes, wagons, horses, mules, and hogs, as will be sufficient fully to pay off and discharge the said notes, the said sale to be held and to take place at some public place in the County of Clark, between the hours of 12 A.M. and 2 o'clock P.M.; and the said party of the second part is hereby authorized and empowered, after said sales, sufficient bills of sale to make to said purchaser, and from the proceeds of said sale, after the expenses of the same are defrayed, to pay off and discharge all of the said notes, and the surplus, if any remains, to pay over to the said party of the first part.

In testimony whereof, the three parties aforesaid have hereunto set their hands and affixed their seals, the day and year first above written.

JOHN D. BRACY, [SEAL.]
BILLUPS GAYLE, [SEAL.]
MARIA MATHERSON. [SEAL.]

Signed, sealed, and delivered in the presence of
THOS. McFADGEN,
R. D. GAYLE,
W. A. MATHERSON.

Personally appeared before me, Dempsey Moore, an acting Justice of the Peace, for and in the County of Clark, John D. Bracy, Billups Gayle, and Maria Matherson, who acknowledge that they signed and sealed the foregoing deed of trust, and the said John D. Bracy, that he delivered the same to the said Billups Gayle, on the day and year therein mentioned. Given under my hand and seal, this seventh day of June, 1844.

DEMPSEY MOORE, [SEAL.]
Justice of the Peace.

Received in office, the 10th day of June, 1844. Recorded the 14th day of June, 1844, Book D, pages 268, 269, 270.

TEWELL POWERS,
Clerk.

The State of Alabama, Clark County. I, H. N. Coate, Clerk of the County Court of the State and County aforesaid, do hereby certify, that the foregoing contains a correct copy of a deed of trust made by John D. Bracy, Billups Gayle, and Maria Matherson, on the 7th day of June, A. D. 1844, as taken from the records on file in my office.

Given under my hand and seal of office at office, this
[SEAL.] 24th day of February, A. D. 1846.

H. N. COATS,
Clerk.

Filed, 9th April, 1853.

WM. FIELD,
Clerk.
By J. A. HUTCHINGS,
Deputy Clerk.

County of White, *ss.*

The State of Arkansas. To all persons to whom these presents shall come, greeting:

Know ye, that whereas John D. Bracy, of the County of White, in said State, died intestate, as it is said, on or about the day of April, A. D. 1852, having at the time of his death personal property in this State, which may be lost, destroyed, or diminished in value, if speedy care be not taken of the same.

To the end, therefore, that the said property may be collected, preserved, and disposed of according to law, we do hereby appoint Bracy McRea, of the County of White, aforesaid, administrator of all and singular the goods and chattels, rights and credits which were of the said John D. Bracy at the time of his death, with full power and authority to dispose of said property according to law; and collect all moneys due said deceased, and in general to do and perform all other acts and things which are or hereafter may be required of him by law.

In testimony whereof I, Samuel Morgan, Clerk of the Circuit Court and ex officio Clerk of the Court of
[SEAL.] Probate in and for the County of White aforesaid, have hereunto set my hand and affixed the seal of said Circuit Court at office, this 3d day of May, A. D. 1852.

SAMUEL MORGAN,
Clerk.
By R. S. BELL,
Deputy Clerk.

State of Arkansas, County of White.

I, Robert S. Bell, Clerk of the Circuit Court and ex officio Clerk of the Court of Probate in and for the County of White aforesaid, do hereby certify the foregoing to be a full and complete transcript of the letters of administration granted to Bracy McRae upon the estate of John D. Bracy, deceased, as the same now appears of record in my office.

Witness my hand and the seal of the said Circuit Court, this day of March *March*, A. D. 1854.

R. S. BELL,
Clerk.

A List of the Property sold by Bracy McRae, the Administrator of the Estate of J. D. Bracy, deceased, 9th day of October, 1852.

1 Mule,	$40 00	Dandridge McRae.
1 do.	25 00	Bracy McRae.
1 Gin Stand,	50 00	D. McRae.
1 Horse Mill,	35 00	do.
1 Mule,	40 00	do.
1 Yoke Oxen,	26 00	do.
1 Lot Books,	50	do.
1 do.	50	do.
1 Book,	1 25	do.
1 do.	30	do.
1 do.	50	do.
1 Lot Books,	3 25	J. W. McConaughey.
1 do.	1 25	do.
1 Book,	55	D. McRae.
1 Lot Books,	2 50	J. W. McConaughey.
1 do.	1 15	do.
1 Book,	50	do.
1 do.	1 00	do.
1 do.	1 25	do.
1 do.	1 75	B. McRae.
1 Lot Books,	50	D. McRae.
1 do.	8 00	do.
1 do.	3 00	do.
1 do.	45	J. W. McConaughey.
1 do.	1 10	D. McRae.
1 do.	75	George Walker.
1 do.	3 00	J. W. McConaughey.
1 do.	1 25	D. McRae.
1 do.	60	do.
1 Book,	25	do.
1 do.	10	do.
1 do.	90	do.
1 Writing Table,	55	do.
1 Large do.	1 00	do.
1 Trunk,	10	do.
1 Washstand and Bowl,	25	do.
3 Chairs,	1 60	do.
1 Writing Desk,	25	do.
1 Bookcase,	1 00	do.
1 Wagon,	15 00	do.
1 Cow and Calf,	14 00	do.
1 do. do.	15 00	do.
1 Horse,	45 00	B. McRae.
	$345 90	

State of Arkansas, County of White.

I, W. C. West, do solemnly swear, that I am not interested in the estate of J. D. Bracy, deceased, or legatee of the estate, and that the above account of property sold by Bracy McRae as administrator of J. D. Bracy, deceased, on the 9th day of October, 1852, is a true account. So help me, God.

W. C. WEST.

Subscribed and sworn to, before me, an acting Justice of the Peace, on the 8th day of February, A. D. 1853.

L. S. PAE,
Justice of the Peace.

Filed, February 9th, 1853.

R. S. BELL,
Clerk.

State of Arkansas, County of White.

White Probate Court, August Term, A. D. 1853.

August 2d, A. D. 1853.

In the matter of the Estate of John D. Bracy, deceased.
Settlement account filed.

On this day, Bracy McRea, administrator of J. D. Bracy, deceased, presented his settlement account as such administrator, which, on motion, is ordered to be filed, and lie over to the next term of this Court for approval and confirmation.

The settlement account referred to above, is in the words and figures following, to wit:

"Account current of Bracy McRea, administrator of John D. Bracy, deceased. Submitted at the August Term, A.D. 1853.

Bracy McRea, Administrator, &c.,
To Estate of J. D. Bracy, deceased, Dr.

To amount of sale, due Oct. 9th, '53, . .	$
Credits.	
May 15th, 1853, By amount paid D. Crise, .	$15 00
Dec. 5th, 1852, " " " L. D. Berill, .	7 50

Amount due Estate.
Filed, August 2d, 1853.

R. S. BELL,
Clerk.

And afterwards, to wit, at the February Term, 1854, of said Court of Probate, and on the 10th day of February, A. D. 1854, the following proceedings were had, and entered of record in the matter of said estate of said John D. Bracy, deceased, to wit:

At this day comes Bracy McRea, as administrator of John D. Bracy, deceased, and files his petition, setting forth and showing, that the personal estate of said deceased is wholly insufficient to satisfy the claims properly authenticated, and prosecuted, and allowed against said estate, and also showing that the said intestate died seized and possessed of one certain house and lot, situate in the town of Searcy, known as Lot No. 11, in Block No. 13; and praying an order to sell said lot to liquidate said claims.

Therefore, it is considered by the Court, that the said administrator be, and he is hereby authorized, to make sale of the said lot and premises, at the court-house door, in the town of Searcy, on the third Monday in March next (1845), and to give notice according to law; and report his proceedings therein to the next term of this Court.

The petition mentioned in the annexed and foregoing order, is in the words and figures following, to wit:

To the Honorable P. A. McDaniel, Judge of the Probate Court, in and for the County of White, and State of Arkansas.

Your petitioner, Bracy McRea, administrator of John D. Bracy, deceased, would respectfully represent unto your honor, that there is in his hands, as administrator as aforesaid, as appears by his account, submitted to this Court at the August term thereof, A. D. 1853, belonging to said estate, the sum of three hundred and twenty-eight $\frac{40}{100}$ dollars, and that since his administration, the following claims have been presented against said estate.

Presented by	Bond & Maxwell,	$1095 58
	James Battie,	42 20
	Humphries & Neville,	17 50
	J. W. Bond,	85 67
	James Savage,	232 17½
	T. J. Rodgers,	2 90
	Estate of Conway,	19 18
	James Savage,	91 56¼
	Bracy McRea,	125 00
	William Spencer & Co.,	203 87
	G. W. Crank,	22 50
	A. Cullum,	5 35
	M. Gilchrist,	69 55
	R. P. Kelly,	73 30
	Robert Rogers,	76 65
	T. D. Merrick,	220 00
	W. B. Isbell,	73 00

Amounting in the aggregate to the sum of $2455 98, which are all the claims which have been admitted as just by him as said administrator, which said claims in the aggregate amount to the sum

of $2127 58 over and above the assets of said estate in his hands for the payment of said claims. Your petitioner further represents that the said John D. Bracy died intestate, and was seized and possessed at the time of his death, of one certain house and lot, situate in the Town of Searcy, for which no provision was made by said intestate, which said lot is known as Lot No. 11, in Block No. 13.

Your petitioner would further represent that he caused to be and had put up, in six of the most public places in the County, the number of notices, as required by law, of his intended application at this time of this Court, for an order of sale of the aforesaid real estate, a copy of which notice is hereto attached and accompanying.

Your petitioner humbly asks this honorable Court to examine the premises, the appraisement and list of sales which are herewith presented, and make an order, authorizing your petitioner, as administrator as aforesaid, to make sale of the afore-described property, to pay the debts of said estate; and your petitioner will ever pray, &c.

BRACY McRAE.

State of Arkansas, County of White, *ss.*

I, Bracy McRae, as administrator of John D. Bracy, deceased, and foregoing petitioner, do solemnly swear, that the facts figures set forth in the foregoing petition are true to the best of my knowledge and belief, so help me God.

BRACY McRAE.

Sworn to and subscribed before me, this 10th day of February, A. D. 1854.

R. S. BELL,
Clerk.

Notice is hereby given, to all whom it may concern, that at the next term of the Probate Court, in and for the County of White, I will petition said Court, that an order be made to sell one certain house and lot, situate in the Town of Searcy, and known as Lot No. 11, in Block No. 13, belonging to the estate of John D. Bracy, deceased, to pay the debts of said estate.

BRACY McRAE,
Admin'r of J. D. Bracy, deceased.

January 6, 1854.

State of Arkansas, County of White, *ss.*

I, Robert S. Bell, Clerk of the Circuit Court, and ex-officio Clerk of the Court of Probate, in and for White County, aforesaid, do certify the foregoing pages to be a full and complete transcript of the sale, bill, settlement, petitions, order, &c. (no inventory or appraisement being on file), relative to the administration of Bracy McRae, as administrator of John D. Bracy, deceased, as the same *as the same* appears on file and of record in my office.

Witness my hand, and the seal of the said Circuit Court, this 25th day of March, A. D. 1854.

R. S. BELL,
Clerk.

Exhibit B, No. 1, *referred to in Bill.*

The State of Alabama, Mobile County.

Be it remembered, that at a term of the Honorable Circuit Court, begun and holden in and for said County, at the court-house of said County, in the City of Mobile, on the fourth Monday after the fourth Monday of October, A. D. 1845, the Honorable John D. Phelan, Judge, then and there presiding, the following proceedings were had:

Notice to John D. Bracy, Maria Matherson, Melville Bracy.

Take notice, that at the next term of the Circuit Court, to be held for the County of Mobile, on the fourth Monday after the fourth Monday of October next, I, T. J. Toulmin, as President of the Branch of the Bank of the State of Alabama, at Mobile, will move said Court for judgment against you, for and on behalf of said Branch Bank, as makers of a promissory note, expressly made payable and negotiable at the said Branch Bank; which note bears date the 9th December, 1843, at Clark County; by which note you, as makers thereof, promise, twelve months after date, to pay Henry B. Holcombe, Cashier, or bearer, the sum of nine thousand and sixty-five dollars, with interest from date, for value received; which said promissory note is regularly indorsed to said Bank.

T. J. TOULMIN,
President.
LINDSAY & FOX,
Bank Attorneys.

Issued 20th day of June, 1845.

The Sheriff of Clark County will execute this notice according to law, and return the same to the Cashier of the Branch Bank, at Mobile, by the first day of November, 1845.

I, T. J. Toulmin, President of the Branch of the Bank of the State of Alabama, at Mobile, do hereby certify, that the promissory note described in the foregoing notice, was, when the same was protested, and now is, really and bona fide, the property of the said Branch Bank. Given under my hand, this 22d day of November, 1845.

T. J. TOULMIN,
President.

Return of Sheriff.

Received, 25th August, 1845. Executed in full the 13th October, 1845.

JOHN B. SAVAGE,
Sheriff.

And on the 25th day of November (1845), a regular day of said term, and the second day of said term, the following judgment was rendered in said cause.

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA, at Mobile,
v.
JOHN D. BRACY, MARIA MATHERSON, and MELVILLE BRACY.

This day came the Branch of the Bank of the State of Alabama, at Mobile, by its attorney, and moved the Court now here, for judgment against John D. Bracy, Maria Matherson, and Melville Bracy, as makers of a certain promissory note, for the sum of 9065 dollars, made by them, dated at Clark County, on the 9th day of December, 1843, payable twelve months after date, to H. B. Holcombe, cashier, and negotiable and payable at the Branch of the Bank of the State of Alabama, at Mobile, was, at its maturity, presented to the said Branch Bank for payment, which was refused; and the said Branch of the Bank of the State of Alabama, at Mobile, here produces and shows the certificate of T. J. Toulmin, its President, that the said note is really and bona fide the property of the said Branch Bank; and it appearing, to the satisfaction of the said Court, that thirty days' notice of this motion has been given to the said defendants, and they saying nothing in bar or preclusion of the same, it is therefore considered, that the said Branch Bank recover against the said defendants, the sum of ten thousand four hundred and eighty-seven $\frac{2}{100}$ dollars, the amount of said note, and its interest and damages thereon, together with its costs in this behalf expended, for which execution may issue.

The State of Alabama, Mobile County.

I, Clement D. Wallace, Clerk of the Circuit Court of said County, do hereby certify, that the foregoing two $\frac{1}{4}$ pages contain a true and correct transcript of the record in the cause aforesaid, in said Circuit Court, at the term aforesaid, as the same doth remain on file in my office.

In testimony whereof, I hereunto set my hand and affix the seal official of said Court, this the 23d day of Sept. A. D. 1852.

C. D. WALLACE,
Clerk.

I, Lyman Gibbons, Judge of the Sixth Judicial Circuit of the State of Alabama (of which said County of Mobile forms a part), do certify, that Clement D. Wallace, whose name appears to the foregoing certificate, is Clerk of the Circuit Court of said County of Mobile, and

was, at the time said certificate was signed by him; that his acts as such are entitled to full faith and credit, and that his foregoing attestation is in due form.

Given under my hand and seal at chambers, in the City of Mobile, this, the 23d day of September, A. D. 1852.

LYMAN GIBBONS. [SEAL.]

John D. Bracy, Maria Matherson, Melville Bracy. Judgment, Circuit Court, Mobile County.

25th Nov., 1845, ...		$10,487 20
Interest to 17th June, 1848, ...		2,148 70
		12,635 90
Cr. By cash, 17th June, 1848, . .	1,397 50	
Int. from 24th Oct., 1841, to 17 June, '48,	184 33	1,581 83
		11,054 07
Int. from 17th June, 1848, to 1st May, 1849, ...	768 86	768 86
		11,822 93
Cr. By cash, 1st May, 1849, . . .	1,401 80	
Int. from 24th Oct., 1841, to 1st May, 1849,	282 23	1,684 03
		10,138 90
Int'st from 1st May, 1849, to 27th Sept., 1852, .		2,709 78
Amount due 27th Sept., 1852, ...		$12,848 68

The estate of Jno. D. Bracy,
To the Branch of the Bank of the State of Alabama, at Mobile,

1852. Dr.

To amount due on judgment, as per statement made on the opposite side of this sheet, ... $12,848 68

The State of Alabama, Mobile County.

I, Henry B. Holcombe, assistant commissioner and chief executive officer of the Branch of the Bank of the State of Alabama, at Mobile, do state, on oath, that nothing has been paid or delivered towards the satisfaction of the debt above stated and claimed, except what appears credited on the account within stated, and that the above balance of twelve thousand eight hundred *eight hundred* and forty-eight $\frac{68}{100}$ dollars, as above stated and demanded, is justly due.

HENRY B. HOLCOMBE,
Assistant Commissioner.

Sworn to, and subscribed before me, Alexander McKindsley, Judge of the City Court of Mobile, in the State of Alabama, at Mobile, *in the State of Alabama*, this 28th day of Sept. A. D. 1852.

ALEXANDER McKINSLEY, [SEAL.]
Judge.

The State of Alabama, Mobile County, to wit.

I, Reuben A. Davis, Clerk of the City Court of Mobile, of said State, in and for said County, do hereby certify, that Alexander McKinsley, whose name appears above and is subscribed to the annexed and foregoing affidavit for probate, is and was, at the date of his attestation to said probate, Judge of the said City Court of Mobile, in said State, in and for said County, duly commissioned, qualified, and acting as such according to the laws of the State of Alabama.

In testimony whereof, I have hereunto set my hand as such [SEAL.] clerk, and affixed the seal of the said Court, this day of September, A. D. 1852.

REUBEN A. LEWIS,
Clerk.

To Bracy McRea, as administrator of *of* John D. Bracy, dec'd.

Sir:—Take notice, that the undersigned is the owner and holder of a claim and demand against the estate of your said intestate, founded upon a certain judgment, a true copy whereof, together with the amount due thereon, after deducting all credits, is hereto appended, and the said claim is hereby exhibited to you for your approval or rejection.

By J. M. CURRAN,
Attorney.

March 1st, 1853. Branch of the Bank of the State of Alabama, at Mobile.

Filed, April, 1853.

WM. FIELD,
Clerk.
By J. A. HUTCHINGS,
Deputy Clerk.

John D. Bracy to B. Gayle.—Deed of Trust.

This Indenture, made this the seventh day June, in the year of our Lord one thousand eight hundred and forty-four, between John D. Bracy, party of the first part, Billups Gayle, party of the second part, and Maria Matherson, party of the third part, all of the County of Clark, and State of Alabama, witnesseth, that the said party of the first part, for and in consideration of the sum of ten dollars, good and lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and other good and lawful considerations hereinafter expressed, hath granted, bargained, sold, conveyed, and confirmed,

and by these presents doth grant, bargain, sell, convey, and confirm unto the said party of the second part, the following described negroes, to wit: Prince, aged about fifty; Christian, aged about forty-five; Toney, aged about nineteen; Mary, aged about eighteen months; Molly, aged about sixteen; Prince, aged about four years; Frank, aged about two years; Peggy, aged about fifty years; Charlotte, aged about thirty years; Betty, aged about twenty-five years; Millison, aged about twenty-two years; Josey, aged about nineteen years; Jim, aged about seventeen years; Mingo, aged about fifteen years; Julia, aged about thirteen years; Bella, aged about sixty years; Morning, aged about sixty years; Ton, aged about fifty-five years; Joe, aged about twenty-one years; Primus, aged about sixty years; Love, aged about fifty-five years; Sam, aged about fifty-five years; Lydia, aged about fifty years; Nat, aged about thirty years; Delia, aged about twenty-five years; Nora, aged about fifteen years; Peggy, aged about thirteen years; Cain, aged about forty-five years; January, aged about six years; Ransom, aged about four years; Elsey, aged about thirty-five years; Chaney, aged about thirteen years; Amos, aged about eleven years; also two plantation wagons, six mules, three horses, and sixty head of hogs, together with all and singular the interest, right, claim, and issue thereupon, this indenture, made to the said party of the second part, in trust for the following purposes, to wit, as a security and indemnity to the said party of the third part, who is security on two promissory notes, to wit: one of said promissory notes is held by the President and Directors of the Branch of the Bank of the State of Alabama, at Mobile, of which the following is a copy, to wit: Clark County, 9th December, 1843; dollars, 9065; twelve months after date, we jointly and severally promise to pay Henry B. Holcombe, Cashier, or bearer, nine thousand and sixty-five dollars, with interest from date, for value received, negotiable and payable at the Branch of the Bank of the State of Alabama, at Mobile.

(Signed) JOHN D. BRACY,
MARIA MATHERSON,
MELVILLE BRACY.

And the other of said two promissory notes is held by the Bank of Mobile, and of which the following is a copy: Mobile, April 16th, 1844; $2574\frac{50}{100}$; on the first day of December next, we, or either of us, promise to pay to the order of the President, Directors, and Company of the Bank of Mobile, two thousand five hundred and seventy-four dollars and fifty cents, value received, negotiable and payable at the Bank of Mobile.

(Signed) J. DONNINGTON,
JOHN D. BRACY,
MARIA MATHERSON.

Now, if the party of the first part shall well and truly pay, or cause to be paid, the above described notes at maturity, then these presents, and all herein contained, shall be null and void; but in case of the non-payment of the said notes, as aforesaid, then this indenture to remain in full force and effect; and the said party of the second part, at the request of the said Maria Matherson, is hereby authorized and empowered, to take the said negro slaves, wagons, mules, horses, and hogs, into her possession, and after giving thirty days' previous notice of the sale, at a sufficient number of public places in the County of Clark, to sell all, or so much of said negroes, wagons, horses, mules and hogs, as will be sufficient fully to pay off and discharge the said notes; the said sale to be held and to take place at some public place in the county, between the hours of 12 A. M. and 2 o'clock P. M., and the said party of the second part is hereby authorized and empowered, after said sale, sufficient bills of sale to make to said purchaser, and from the proceeds of said sale, after the expenses of the same are defrayed, to pay off and deliver all of the said notes, and the surplus, if any remain, to pay over to the said party of the first part.

In testimony whereof, the three parties, as aforesaid, have hereunto set their hands, and affixed their seals, the day and year first above written.

JOHN D. BRACY. [SEAL.]
BILLUPS GAYLE. [SEAL.]
MARIA MATHERSON. [SEAL.]

Signed, sealed, and delivered
in the presence of
R. D. GAYLE.
W. A. MATHERSON.

Personally appeared before me, Dempsey Moore, an acting Justice of the Peace, for and in the County of Clark, John D. Bracy, Billups Gayle, and Maria Matherson, who acknowledged that they signed and sealed the foregoing deed of trust, and the said John D. Bracy that he delivered the same to the said Billups Gayle, on the day and year therein mentioned.

Given under my hand and seal, this 7th day of June, 1844.

DEMPSEY MOORE, [SEAL.]
Justice of the Peace.

Received in office the 10th day of June, 1844.

Recorded the 14th day of June, 1844, Book D, pages 268, 269, 270.

FERRELL POWERS,
Clerk.

The State of Alabama, Clark County.

I. H. W. Coate, Clerk of the County Court of the State and

County, aforesaid, do hereby certify, that the foregoing contains a correct copy of a deed of trust, made by John D. Bracy, Billups Gayle, and Maria Matherson, on the 7th day of June, A.D. 1844, as taken from the records on file in my office.

Given under my hand and seal of office, at office, this
[SEAL.] twenty-fourth day of February, A.D. 1846.

H. W. COATE,
Clerk Circuit Court.

This Indenture, made this, the seventh day of June, in the year of our Lord, one thousand eight hundred and forty-four, between John D. Bracy, party of the first part; Billups Gayle, party of the second part; and Maria Matherson, party of the third part; all of the County of Clark and State of Alabama.

Witnesseth, that the said party of the first part, for, and in consideration of the sum of ten dollars, good and lawful money of the United States of America, to him in hand paid, by the said party of the second part, the receipt whereof is hereby acknowledged, and other good and lawful considerations hereinafter expressed, hath granted, bargained, sold, conveyed, and confirmed, and by these presents, grant, bargain, sell, convey, and confirm unto the said party of the second part, the following described negroes, to wit: Prince, aged about fifty; Christian, aged about forty-five; Fanny, aged about nineteen; Molly, aged about sixteen; Mary, aged about eighteen months; Prince, aged about four years; Frank, aged about two years; Peggy, aged about fifty years; Charlotte, aged about thirty years; Betty, aged about twenty-five years; Millison, aged about twenty-two years; Josey, aged about nineteen years; Jim, aged about seventeen years; Mingo, aged about fifteen years; Julia, aged about thirteen years; Bella, aged about sixty years; Morning, aged about sixty years; Tom, aged about fifty-five years; Joe, aged about twenty-one years; Primus, aged about sixty years; Lowe, aged about fifty-five years; Sam, aged about fifty-five years; Lydia, aged about fifty years; Nat, aged about thirty years; Delia, aged about twenty-five years; Nora, aged about fifteen years; Peggy, aged about thirteen years; Cain, aged about forty years; January, aged about six years; Ransom, aged about four years; Elsey, aged about thirty-five years; Chaney, aged about thirteen years; Anna, aged about eleven years; also two plantation wagons, six mules, three horses, and sixty head of hogs; together with all and singular, the interest, right, claim, and issue therefrom.

This conveyance is made to the said party of the second part, in trust for the following purposes, to wit: as a security and indemnity to the said party of the third part, who is security on two promissory notes, to wit: one of said promissory notes is held by the President and Directors of the Branch of the Bank of the State of Alabama, at Mobile, of which the following is a copy, viz.:

CLARK COUNTY, 9th December, 1843.

Dollars 9065. Twelve months after date, we jointly and severally promise to pay Henry B. Holcombe, cashier, or bearer, nine thousand and sixty-five dollars, with interest from date, for value received, negotiable and payable at the Branch of the Bank of the State of Alabama, at Mobile.

Signed, JOHN D. BRACY.
MARIA MATHERSON.
MELVILLE BRACY.

And the other of said two promissory notes is held by the Bank of Mobile, and of which the following is a copy:

MOBILE, April 16th, 1844.

$2574\frac{51}{100}$. On the first day of December next, we, or either of us, promise to pay to the order of the President, Directors, and Company of the Bank of Mobile, two thousand five hundred and seventy-four dollars and fifty-one cents, value received, negotiable and payable at the Bank of Mobile.

Signed, J. DONNINGTON.
JOHN D. BRACY.
MARIA MATHERSON.

Now if the said party of the first part shall well and truly pay, or cause to be paid, the two above-described notes, at maturity, then these presents, and all herein contained, shall be null and void; but in case of the non-payment of the said notes as aforesaid, then this Indenture to remain in full force and effect; and the said party of the second part, at the request of the said Maria Matherson, is hereby fully authorized and empowered to take the said negro slaves, wagons, mules, horses, and hogs, into his possession, and after giving thirty days' previous notice of the sale, at a sufficient number of places in the County of Clark, to sell all, or so much of said negroes, wagons, mules, horses, and hogs, as will be sufficient fully to pay off and discharge the said notes. The said sale to be held, and to take place at some public place, in the County of Clark, and between the hours of 12 A. M. and 2 o'clock P. M., and the said party of the second part is hereby authorized and empowered, after said sale, sufficient bills of sale to make *to make* to said purchaser, and from the proceeds of said sale, after the expenses of the same are defrayed, to pay off and discharge all the said notes, and the surplus, if any remains, to pay over to the said party of the first part.

In testimony whereof, the three parties aforesaid, have hereunto set their hands and affixed their seals the day and year first above written.

JOHN D. BRACY. [SEAL.]
BILLUPS GAYLE. [SEAL.]
MARIA MATHERSON. [SEAL.]

The following words "previous" and "a sufficient number of" in the eighty-eighth line interlined before signing, 3d page.

Signed, sealed, and delivered
in the presence of
THOMAS MCFENDOZER,
R. D. GAYLE,
W. A. MATHERSON.

Personally appeared before me, Dempsey Moore, acting Justice of the Peace for and in the County of Clark, John D. Bracy, Billups Gayle, and Maria Matherson, who acknowledge that they signed and sealed the foregoing deed of trust, and the said John D. Bracy that he delivered the same to the said Billups Gayle, on the day and year therein mentioned.

Given under my hand and seal this June 7th, 1844.

DEMPSEY MOORE, [SEAL.]
Justice of the Peace.

Received in office 10th June, 1844, and recorded the 14th day of June, A. D. 1844, in Book D, pages 268, 269, 270.

TEWELL POWERS,
Clerk.

State of Louisiana, Parish of Morehouse.

On this 19th day of September, one thousand eight hundred and forty-nine, I, John D. Bracy of the State of Arkansas, White County, do hereby transfer, convey, sell, and deliver unto Mrs. Margaret McRea, widow of Donald R. W. McRea, deceased, of the State of Louisiana, and Parish aforesaid, all my right, title, interest, and claim, in and to the following named and described negroes (slaves for life), now working in said county in the State of Arkansas, viz.: negro man named Prince, aged about sixty years; a woman Peggy, aged about sixty years; Betty, a woman, aged about sixty-seven; Jose, a man, aged about twenty-four years; Juliett, a girl, aged about seventeen; Molly, a woman, about twenty-three years of age; Susana, a girl, about six years of age; Washington, a boy, about three years of age; and an infant boy, child of the woman Molly; boy Prince, aged about ten years; Frank, a boy, aged about eight years; William, a boy, aged about four years; Gilbert, a boy, about ten months old; Mary, a girl, about six years of age; Lucy, a girl, about four years of age; Eliza, a girl, aged about three years. To have and to hold unto the said Margaret McRea, her heirs and assigns forever, with all the rights of warranty known under the laws of the State of Louisiana. The consideration for which this sale is made, is the sum of thirty-five hundred dollars, payable as follows, in four equal instalments, the first payable on the 19th day of September, 1854, for the sum of eight hundred and seventy-five dollars; and eight hundred and seventy-five dollars payable the 19th of Septem-

ber, 1855; eight hundred and seventy-five dollars payable the 19th September, 1856; and eight hundred and seventy-five dollars payable the 19th September, 1857; for which sums of money, I, the said Margaret McRea, this day give my four sealed promissory notes corresponding with the falling due of said several payments, and also acknowledge the possession and delivery of said negroes; thus done and signed in the said Parish of Morehouse, day and date first above written, in presence of the undersigned witnesses.

JOHN D. BRACY,
MARGARET McREA.

Attest,
W. A. HOLLAND,
W. D. PEARSON.

An Act to continue a Commissioner and Trustee to close the affairs of the Banks, and for other purposes.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened: That the resignation of F. S. Lyon, Commissioner and Trustee to settle the affairs of the State Bank and branches, be and the same is hereby accepted.

Sec. 2. Be it further enacted, that the office of commissioner and trustee to settle the remaining business of the State Bank and branches provided for and continued in force for two years, under and by an Act of 3d of February, 1852, "To continue the office of commissioner and trustee to settle the affairs of the State Bank and branches," be and the same is hereby further revived and continued in force for the term of two years from and after the passage of this act.

Sec. 3. And be it further enacted, that John Whiting, of Montgomery, be and he is hereby appointed commissioner and trustee to settle the remaining affairs of the State Bank and branches, and that all the remaining debts, assets, property, estates, and effects of the said Bank of the State of Alabama, and its several branches of every kind and description, be and the same are hereby vested in the said John Whiting, as trustee as aforesaid, and his successors in office, with the same powers and authority, to settle, collect, compromise, and compound said debts, and sell and convey the property of the Bank, as was confided by law to his predecessor in the said office of trustee, and the said trustee, hereby appointed, shall receive for his services an annual salary of $25.00.

Sec. 4. Be it further enacted, that the act of February 3d, 1852, entitled "An Act to continue the office of commissioner and trustee to settle the affairs of the State Bank and branches, and for other purposes," and all former acts or parts of acts thereby continued in force, are hereby revived and continued in force, for the period of two years, and until the end of the next session of the General Assembly, except so far as altered or changed by this act, and the

powers in and by said laws conferred upon F. S. Lyon, as commissioner and trustee, shall or may be exercised by the said John Whiting, as trustee.

Sec. 5. Be it further enacted, that the said John Whiting shall, before entering upon his duties as trustee, give bond with two or more sureties, to be approved by the Governor, in the penalty of one hundred thousand dollars, conditioned for the faithful discharge of his duties as such trustee.

Sec. 6. Be it further enacted, that the said trustee be and he is hereby authorized, to appoint an agent or assistant, at each of said Banks, to aid in winding up the affairs thereof; and for the services of each of said assistants may allow an annual salary or compensation not exceeding at each the amount heretofore fixed by law, except at the Branch Bank at Huntsville, where the compensation shall not exceed $200 00 per annum; *provided*, the trustee shall have power in the employment of assistants to agree upon the compensation within the limits fixed by law, to correspond with the services to be performed; and each of said assistants shall give bond with sureties as heretofore required.

Sec. 7. And be it further enacted, that, in addition to the funds placed by him subject to the control of said trustee, the interest which may accrue upon any bonds or securities held by the State is subject to his control, to be used in payment of interest or principal of the public debt.

Approved, December 20, 1853.

SECRETARY OF STATE'S OFFICE, ALABAMA,
MONTGOMERY, March 15th, 1854.

I, Vincent M. Benham, Secretary of State of the State of Alabama, do hereby certify, that the above Act, approved December 20th, 1853, is a true copy taken from the original roll, now on file in this office.

In testimony whereof, I have hereunto set my hand and
[SEAL.] affixed the great seal of the State, in the City of Montgomery, the day and year above written.

V. M. BENHAM,
Secretary of State.

An Act to amend and continue in force an Act entitled "An Act to regulate the affairs of the Banks, and provide for the payment of the State Bonds," approved the 4th February, 1846.

Sect. 1. Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened, That the resignations of Francis L. Lyon, William Cooper, and Clement C. Clay, as commissioners and trustees, appointed under and by virtue of the provisions of the above recited Act, to settle the affairs of the Bank of Alabama and its several branches, be and the same are hereby accepted.

Sect. 2. And be it further enacted, That all the remaining effects of the Bank of the State of Alabama, and of the several branches thereof, and all debts, damages, and estate, of whatever description thereto belonging, shall be vested in Francis L. Lyon, of Marengo County, and his successor or successors in office, as commissioner and trustee; who, before entering upon the duties of his office, shall enter into bond with good and sufficient security, in the sum of one hundred thousand dollars, payable to the Governor of the State, and to be approved by him, conditioned for the faithful discharge of his duties, whose term of office shall be two years, and until his successors are qualified, and whose duty it shall be to collect, secure, compound, compromise, and settle the same at the earliest day the same can be done, having regard alone to the interest of the State.

He may sell, lease, or rent the real estate, and sell the personal property of said Banks for cash, and make such title to the same as may be vested in the Bank of the State of Alabama, or any of the branches thereof: *provided*, that in case of sale of real property, a longer time of credit than three years shall not be given to any purchaser.

Sect. 3. And be it further enacted, That the said Act entitled "An Act to regulate the affairs of the Banks, and provide for the payment of the State Bonds," approved the 4th day of February, 1846, and all other laws now in force regulating the collection of the debts due to said Banks, and prescribing the mode of settling up their affairs, except so far as altered or modified by this Act, be and the same are hereby continued in force.

Sect. 4. And be it further enacted, That the said commissioner and trustee hereby appointed shall be, and is hereby authorized, in collecting the debts due to said Banks, and in disposing of the property, real and personal, belonging to such, and settling up and closing the affairs of each, and in providing for the payment of the State debt, if in his judgment the public interest shall so require, to appoint, in addition to the principal assistant at each Bank, one clerk at the Branch Bank, at Montgomery, and two clerks at the Branch Bank at Mobile: *provided*, such clerks are only retained so long as the public interest may require; *and provided also*, the salaries of such clerks shall not exceed, at Mobile, at the rate of twelve hundred dollars per annum, and at Montgomery at the rate of eight hundred dollars per annum. And the said commissioner and trustee is hereby required to take good and sufficient bonds with ample security from the assistant commissioners, and clerks and agents, before they respectively enter upon the discharge of their several duties, in such sums as said commissioner and trustee may prescribe.

Sect. 5. And be it further enacted, That it shall and may be lawful for said commissioner and trustee hereby appointed, in providing and transferring funds for the payment of the public debt, or the interest thereof, to use any funds or means belonging to the State.

Sect. 6. And be it further enacted, That the said commissioner and trustee hereby appointed, shall be authorized, if in his judgment the public interest would be thereby promoted, to appoint one competent clerk to assist him in a careful investigation into the accounts, books, and affairs of each of said Banks, and in causing the accounts relating to their circulating and cash transactions to be thoroughly investigated and correctly stated: *provided*, such clerk shall only be retained in office so long as may be necessary to complete such investigation, and correct the errors, if any there be, in the accounts of said Banks:

And provided further, the salary *the salary* of such clerk, for the time so employed, shall not exceed the rate of one thousand dollars per annum for the time so employed.

Sect. 7. And be it further enacted, That if said commissioner and trustee, or any agent, clerk or officer, by him employed, shall use any of the funds, means, or assets of said Banks for any other purpose than the purpose herein specified, and the needful expenses arising thereon, he or they shall hereafter, on conviction by a jury, in addition to the penalties now imposed by law, be rendered forever incapable of holding any office of honor, profit, or trust in the State of Alabama.

Sect. 8. And be it further enacted, That in any and all suits in favor of said Banks, or either of them, it shall be lawful for the said commissioner or trustee, or any agent or attorney by him authorized, to certify that any note, bill, or paper, sued upon, as really and bona fide the property of such Bank, and such certificate, so signed by said commissioner and trustee, or agent, or attorney, by him appointed, shall be valid and effectual in all courts, of the same extent that such certificates were made by the former presidents of said Banks; and the several assistant commissioners shall have the same power to make such certificates for the Bank and several branches, for which they may be respectively appointed under this act.

Sect. 9. And be it further enacted, That all notices that may have been issued, all suits, judgments, decrees, and executions, now pending in favor of the said Bank, or any of its branches, shall be prosecuted to conclusion in the same manner as if this act had never been passed; and all suits hereafter to be commenced shall be prosecuted in the name of the Bank or branch to which the debt may belong.

Sec. 10. And be it further enacted, that, in case of a vacancy in the office of commissioner and trustee, the said office shall be filled by the Governor of this State, and the person by him appointed shall give bond and security, and be clothed with the same powers and authority hereby conferred on that officer, and be liable to the same disabilities and restrictions, and shall hold his office till the end of the next session of the General Assembly, unless sooner vacated; and, upon good and sufficient cause, the Governor shall have power to remove the commissioner and trustee from office, and transfer to his successor all the Bank assets in his hands.

Sec. 11. And be it further enacted, that it shall be the duty of the said commissioner by this act appointed, to cause a full investigation to be made of all the accounts of all bank attorneys, agents, marshals, sheriffs, and of all others who may have collected, or may have moneys of said Bank or Branch Banks in their hands, or be liable for the same, so as to ascertain what sums may be due from such agents at any time since the said Banks went into operation, and which may yet be due, and that he take all necessary measures for the recovery of such sums as may be found to be still due from such agents to said Bank or branches.

Sec. 12. And be it further enacted, that the commissioner and trustee shall be allowed the sum of twenty-five hundred dollars per annum for his services; and, before he enters upon his duties, shall take and subscribe an oath, that he will faithfully perform the duties required of him by this act, having regard alone to the public interests, free from all favor or prejudice for or against any of the debtors to said Bank, which oath shall be filed in the office of the Secretary of State.

Sec. 13. And be it further enacted, that the said commissioner or trustee may authorize the assistant commissioners or either of them, to compound or to compromise any particular debts, the same being bad or doubtful, under such limitations and restrictions as he may direct.

Sec. 14. And be it further enacted, that said commissioner shall have full power to make and execute deeds for all lands heretofore sold by the aforesaid commissioners and trustees, which shall vest in the purchaser the same title as if executed by all said commissioners and trustees while in office.

Sec. 15. And be it further enacted, that the powers given by the second section of this Act shall apply to all really bad, doubtful and disputed cases, although such debts may have been heretofore marked "good."

Approved, February 4th, 1848.

SECRETARY OF STATE'S OFFICE, ALABAMA,
MONTGOMERY, March 15, 1854.

I, Vincent M. Benham, Secretary of State of the State of Alabama, do hereby certify, that the above Act, approved February 4th, 1848, is a true copy taken from the original roll now on file in this office.

In testimony whereof, I have hereunto set my hand and
[SEAL.] affixed the great seal of the State, in the City of Montgomery, the day and year above written.

V. M. BENHAM,
Secretary of State.

An Act to regulate the affairs of the Banks, and provide for the payment of the State Bonds.

Sect. 1. Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened, That all of the effects of the Bank of the State of Alabama, and of the several Branches thereof, and all debts, demands, and estate of whatever description thereunto belonging, shall be vested in the following persons, to wit, Francis F. Lyon, of Marengo County, Benjamin Fitzpatrick, of Autauga County, and William Cooper, of Franklin County, and their successors, as commissioners and trustees, who, before entering upon the discharge of their duties, shall enter into bond with good and sufficient security to be approved by the Governor, in the sum of fifty thousand dollars each, and conditioned for the faithful discharge of the duties of their office. The said bonds shall be made payable to the Governor of the State for the time being and his successors in office, and shall be deposited in the office of the Secretary of State, whose term of office shall be two years, and whose duty it shall be to collect, compound, secure, and settle the same at the earliest day the same can be done, having regard alone to the interest of the State. They may sell, lease, or rent the real estate and sell the personal property of said Banks on such terms as to them may seem most expedient, and make such title to the same as is now vested in the State; provided, that, in case of sale, a longer term of credit than three years shall not be given to any purchaser; provided also, that the Bank debtors who extended their debt under the provisions of the Act passed on the twenty-fifth of January, eighteen hundred and forty-five, entitled "An Act to settle the affairs of the Bank of the State and its Branches," may extend their debt to the first day of June, eighteen hundred and forty-seven, upon paying one half of the debt, and interest due, on or before the first day of June, eighteen hundred and forty-six; and those debtors classed "good," who failed to extend their debts under the said Act, may extend the same to the first day of June, eighteen hundred and forty-seven, by paying two-thirds of the debt, and all costs and interest due, on or before the first day of June, eighteen hundred and forty-six; provided, further, that said commissioners are satisfied that the debt proposed to be extended, will be safe, and the State not likely to be injured by the proposed extension; and provided, further, that all the provisions of said Act, to settle the affairs of said Bank, be complied with except as amended or altered by this Act; and provided, further, that no debt, now marked "good," shall be extended beyond the first day of June, eighteen hundred and forty-seven, unless in the opinion of the commissioners extension beyond that time shall be necessary for the security of the debt; and the said commissioners shall have authority to appoint one officer from among those belonging to each of the Branch Banks, and to retain one at the State Bank

at Tuscaloosa, to assist in closing the several concerns, or to appoint in lieu thereof any other person they may think proper; they may pay each of these assistants a sum not exceeding twelve hundred dollars per annum, except at Montgomery and Mobile, where they may pay the assistants a salary not exceeding fifteen hundred dollars per annum, which said assistants may be continued so long as the said commissioners, or their successors, may need them to effect the object of this Act.

Sect. 2. And be it further enacted, That it shall be lawful for the said commissioners to use any of the assets so vested in them, or any funds in the treasury not otherwise appropriated, in such manner as to them may seem most advisable in the settlement of the Banks of the State: provided, they retain in their hands a sufficient amount of the assets of said Bank, to pay off the amounts that may be due the several townships in this State, and the interest on the University Fund, in such manner as may be prescribed by law.

Sect. 3. And be it further enacted, That no more of the circulation of the State Bank, or branches, shall be burned, unless said commissioners shall so order on account of its depreciation; and then no more than may be necessary in their opinion to stop the depreciation of the same.

Sect. 4. And be it further enacted, That any vacancies which may happen in said commissioners during the recess of the Legislature, shall be filled by the Governor, with the concurrence of the remaining commissioner, or commissioners, or a majority of them, which appointments shall continue until filled by the Legislature.

Sect. 5. And be it further enacted, That if said commissioners, or either of them, use any of the funds, means, assets, assigned them, for any other purpose than the purposes herein specified, and the needful expenses arising thereon, they shall hereafter, on conviction of a jury, be rendered forever incapable of holding any office of honor, profit, or trust in the State of Alabama.

Sect. 6. And be it further enacted, That hereafter it shall not be lawful for any Bank debtor to remove his property beyond the limits of this State, until they make such settlement with the commissioners as is satisfactory to them; and should any Bank debtor move his effects from this State, with intent to defraud any of the banks of this State, contrary to the provisions of this Act, he shall, upon conviction, be liable to such imprisonment in the Penitentiary, as the jury trying the same may assess against him.

Sect. 7. And be it further enacted, That said commissioners, whenever they may think the public interests require the same, shall be authorized to remove all of the assets of said Bank and branches, and books and accounts, evidences of debts of whatever form, titles for land, lots or buildings, to the seat of government of the State.

Sect. 8. And be it further enacted, That it shall be the duty of the commissioners, at the expiration of twelve months from the pas-

sage of this Act, and every six months thereafter, to make to the Governor a full and complete report of all debts that may have been collected, and to what class of debts the said debts so collected belong, and upon what terms such debts had been collected; and that it shall be the duty of the Governor to cause a condensed statement of every report of said commissioners to be published in one of the newspapers at the seat of Government.

Sect. 9. And be it further enacted, That the commissioners shall each be allowed two thousand five hundred dollars per annumn, for their services, and before they enter upon their duties, shall take and subscribe an oath, that they will faithfully perform the duties required of them by this Act, having regard alone to the interest of the public, free from favor or prejudice for or against any of the debtors of said State; which oath shall be filed in the office of the Secretary of State.

Sect. 10. And be it further enacted, That the powers now vested in the President and Directors of the State Bank and branches, for the control and management of said Banks, and the security and collection of the debts due the same, not repealed by the provisions of this Act, be and the same are hereby vested in said commissioners; and the corporate names of the said Bank and branch Banks, may be used, as heretofore, in the conduct of their affairs respectively, and in suits for and against them; and the certificate heretofore required to be made by the President of said Bank, may be made by said commissioners, or any agent *or any agent* or attorney appointed by them: provided, the salary of the Bank attorneys appointed by said commissioners shall not be increased on the amount now paid them by existing laws; and that it be made their duty to attend to the business of the Bank in each of the counties adjoining the one in which the Bank is located; and provided further, that the compensation given to agents for compromising and settling the bad and doubtful debts shall not exceed in any case more than four dollars per day, for the time such agent or agents may be employed by the commissioners.

Sect. 11. And be it further enacted, That in all proceedings for the recovery of debts due to said Banks, or for defence of suits against said Banks, either at law or equity, it shall not be necessary for said Banks to give any statutory bond now provided in judicial proceedings; and any sheriff, coroner, or other officer, executing any process or order in such proceedings, shall be indemnified by said Banks for any damages which may be recovered against them, by reason of their action therein, in the same manner as if bond had been given.

Sect. 12. And be it further enacted, That the present officers of said Banks are hereby continued in office until said commissioners qualify and enter upon the discharge of their duties.

Approved 4th of February, 1846.

SECRETARY OF STATE'S OFFICE, ALA.,
MONTGOMERY, March 15, 1854.

I, Vincent M. Benham, Secretary of State of the State of Alabama, do hereby certify, that the above Act, approved the 4th of February, 1846, is a true copy, taken from the original roll, now on file in this office.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the great seal of the State, in the City of Montgomery, the day and year above written.

V. M. BENHAM,
Secretary of State.

An Act to place the Bank of the State of Alabama, at Tuscaloosa, in liquidation, and to provide for the final settlement of its affairs, and for other purposes.

Sect. 1. Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened, That the expiration of the Charter of the President and Directors of the Bank of the State of Alabama, or any of the branches thereof, shall in no wise effect the lien of any judgment, and other security in favor of or against said Bank and branches. Nor shall the same in any wise effect any suit now pending, or hereafter to be brought in favor of or against said Bank or branches; but that all suits now brought, or hereafter to be brought, shall be regulated by the provisions now prescribed by law.

Sect. 2. And be it further enacted, That the expiration of said charter or charters shall in no wise effect the right of property, now held in the real and personal estate, chose in action, or other assets of said Bank or branches, but that the said charters shall go on to collect and pay their debts, and dispose of their property and effects in the same manner as if their charters had not expired.

Approved December 31st, 1844.

SECRETARY OF STATE'S OFFICE, ALA.,
MONTGOMERY, March 15, 1854.

I, Vincent M. Benham, Secretary of State of the State of Alabama, do hereby certify that the within Act, approved December 31st, 1844, is a true copy taken from the original roll now on file in this office.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the great seal of the State, in the City of Montgomery, the day and year above written.

V. N. BENHAM,
Secretary of State.

An Act to settle the affairs of the Bank of this State and Branches.

Sect. 1. Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened, That

the Legislature shall elect two Directors, for the Bank of the State of Alabama, and each of the Branch Banks, from five persons, to be nominated by the Governor, for each Bank, who shall hold their offices for the term of one year, and shall, with the President to be elected as heretofore, respectively take charge of the assets of the said Bank, and Branch Banks, and proceed to adjust and close the business thereof, as is hereinafter provided; but before the said President and Directors shall take charge of the assets of the said Banks, they shall respectively enter into bond, with good and sufficient security, payable to the Governor, and his successors in office, in the sum of twenty thousand dollars, conditioned faithfully to perform the duties of their office; which bond shall be approved by a Judge of the Circuit Court, or Supreme Court, of the State, and be recorded in the office of the County Court, where the Bank is situated, and the original shall be filed with the Secretary of State, and a copy of the same, duly certified, shall be admitted as evidence in any Court in this State, in place of the original; and if any vacancy occur in any of the Boards of President and Directors, during the recess of the Legislature, the same shall be filled as now provided by law.

Sect. 2. And be it further enacted, That all the debts owing to said Banks, whether the same now due, or hereafter to become due, (except the bills purchased by the President and Directors of the State Bank, during the year (1844) eighteen hundred and forty-four, and bills of exchange which were received for curtailments, during the year eighteen hundred and forty-four, all of which said bills of exchange, shall be collected without the privileges of extension) may be extended until the first day of June, eighteen hundred and forty-six, by application to the President and Directors of said Banks; provided the same be done on or before the first day of June, eighteen hundred and forty-five; by paying all costs and charges, that may have accrued upon the same, and one-third of the debt, principal and interest, due at the time of extension. Provided further, that the said President and Directors shall have power, in all cases, upon the payment of the said amount, to require additional security for the balance of the debt, if, in their judgment, its security or the condition of the debtor requires it.

Sect. 3. And be it further enacted, That on all judgments now existing, or which may be rendered before the first day of June next, in favor of said Bank and Branch Banks, the President and Directors shall be authorized to suspend executions thereon, for twelve months, on the payment of all costs and one-third of the principal and interest of said judgments; provided all the parties to said judgments will file their assent to the suspension in writing, in the Bank, or Branch Banks, before such suspension shall be granted; and provided further, that when the securities in any judgment are dead, or removed beyond the jurisdiction of this State, the princi-

pal defendant shall be allowed to extend the same, on the terms above stated, by giving ample and additional security for the balance, viz., mortgage or personal security, to the satisfaction of the President and Directors of the Bank, or Branch Banks, to which the said judgment may be owing; provided, that all judgments now rendered in favor of any of said Banks, or that may hereafter be rendered, shall be lien on all of the real estate of the defendants, which lien shall not be discharged until the judgment is satisfied, nor shall any lien arising from a junior judgment, in favor of any individual, overreach such lien, nor shall any contract, entered into after the rendition of such judgment, by the defendants, ever overreach such lien until the judgment is satisfied. Provided further, that there shall be but one execution for costs on any judgment.

Sect. 4. And be it further enacted, That no Bank debtors shall be entitled to the provisions of the third section of this act, until he or she has filed the written consent of his or her securities to such extension, in the Bank where the same is applied for; providing said securities be living or reside within the limits of the State of Alabama.

Sect. 5. And be it further enacted, That all debts falling due during the year eighteen hundred and forty-five, and after the first day of June, eighteen hundred and forty-five, may be extended according to the provisions of the third section of this act; provided, the same be done within thirty days after the same may become due.

Sect. 6. And be it further enacted, That it shall be the duty of the President and Directors of the said Bank and Branch Banks, within thirty days after the first of June, eighteen hundred and forty-five, to place in suit, all notes, bills of exchange, or other evidences of debts, and upon those becoming due after the first of June, eighteen hundred and forty-five, and in said year, within thirty days after the same becoming due, which may be good, or reported as good, unless the provisions of this act, extending the same, be complied with, and all other debts, whether marked bad, or doubtful, shall in like manner be placed in suit, if the said President and Directors believe the same can be collected; provided the institution of such suits does not interfere with, or violate any agreement or contract made by the said Banks, with their debtors, previous to the passage of this act.

Sect. 7. And be it further enacted, That all cases marked bad, doubtful, or unknown, may be placed in the hands of such trustworthy agents or attorneys as they may select in the County where the debtor resides, who shall give bond or security, in such sum as may be required by said President and Directors, for the faithful performance of said trust; and said agents or attorneys shall have full power to collect or compound said debts, on the best practicable terms; provided the said settlement, or compromise, be approved

and sanctioned by the President and Directors of the said Bank or Branch Banks; but in no case shall the Bank or State be liable for costs, unless the President and Directors expressly direct suit to be brought for the same; the said agents or attorneys shall not have more than fifteen per cent. on the amount collected from debtors of this State, and not more than twenty-five per cent. on the amount collected from non-residents.

Sect. 8. And be it further enacted, That in addition to the duties now required of the attorneys *of the attorneys* of the several Banks, they shall, within twenty days after the adjournment of each and every Court in which suits may be brought in favor of said Banks, file a full statement, showing the condition of each and every suit, which statement shall be certified by the Clerk of said Court, and lodged with the President and Directors of said Banks.

Sect. 9. And be it further enacted, That the President and Directors hereby authorized to sell all the personal estate of said several Banks at any time they may think proper, during the year eighteen hundred and forty-five, at public auction, for cash, giving thirty days' notice, as now provided by law, of the time and place of sale; and they shall sell simply such title as the Banks have, without any warranty of title.

Sect. 10. And be it further enacted, That the President and Directors of said Banks shall sell the real estate belonging to said Banks, either at public or private sale, and at such time during the year 1845, eighteen hundred and forty-five, as they shall deem most expedient; provided, that in all cases of sale, three-fourths of the amount at which the land was valued be obtained, and the terms of sale and payment be the same as are provided in the act approved the twenty-first of January, eighteen hundred and forty-three; and provided further, that said real estate be sold for specie or specie funds.

Sect. 11. And be it further enacted, That it shall be the duty of the President and Directors of the several Banks, to make report to the Legislature at the commencement of every session of the General Assembly, showing the condition of the Banks, which shall contain a statement, showing all the debts due to said Banks, what amount they have collected, what property they have sold, and to whom, and for what price.

Sect. 12. And be it further enacted, That the compensation of the President and Directors of said several Banks, shall be the same as now provided by law.

Sect. 13. And be it further enacted, That in all cases where a special contract has been made with any debtor of said Bank or branches, taking the particular case out of the operation of the several extension laws heretofore passed, and giving to said debtor a longer time to pay his debts, it shall not be lawful for such debtor to take the benefit of this law; but in all such cases it shall be the duty

of said President and Directors to place the debt in suit, unless the same, or the several instalments of the same, be promptly paid at maturity.

Sect. 14. And be it further enacted, That the President and Directors of the Bank of the State of Alabama, are hereby authorized and required to make provision for the payment of the interest on the State Bonds, issued on account of said State Bank and each of its branches, and any funds in either of said Banks, or in the State Treasury, not otherwise appropriated, shall be subject to the control and management of said Directors for this purpose; provided the consent of the Governor to such provision be first obtained.

Sec. 15. And be it further enacted, That so much of an Act, entitled "An Act to regulate the management and expenses of the Bank of the State of Alabama, and its several Branches," approved eleventh of February, eighteen hundred and forty-three, as requires the appointment of agents to serve notices, attachments, executions, &c., be and the same is hereby repealed.

Sect. 16. And be it further enacted, That it shall be the duty of the President and Directors of the Bank of the State of Alabama, within thirty days after the passage of this Act, to destroy or efface all the plates of every denomination belonging to said State Bank and Branch Banks, and also to burn all the blank impressions of the State Bank.

Sect. 17. And be it further enacted, That the tax fees of the Bank attorneys shall be two dollars in each case; provided, however, that but one tax fee shall be allowed on any one note, bond, or bill.

Sect. 18. And be it further enacted, That the Cashier of the State Bank, in the presence of the Directors, Governor, and Secretary of State, is hereby authorized to exchange so much of the currency deposited in the Bank by the Treasurer of the State, as is so much defaced as to be unfit for circulation, for an equal amount of undefaced bills, in the possession of the Bank, either of the bills of the State Bank or Branches.

Sect. 19. And be it further enacted, That all laws and parts of laws contravening the provisions of this Act, are, and the same are hereby repealed.

Approved, January 25th, 1845.

SECRETARY OF STATE'S OFFICE, ALABAMA,
MONTGOMERY, March 15, 1854.

I, Vincent M. Benham, Secretary of State of the State of Alabama, do hereby certify, that the foregoing Act, approved January 25th, 1845, is a true copy taken from the original roll now on file in this office.

In testimony whereof, I have hereunto set my hand, and
[SEAL.] affixed the great seal of the State, in the City of Montgomery, the day and year above written.

V. M. BENHAM,
Secretary of State.

An Act to establish a Branch of the Bank of the State of Alabama, in the City of Mobile.

Sect. 1. Be it enacted by the Senate and House of Representatives, in the State of Alabama, in General Assembly convened, That a Branch of the Bank of the State of Alabama, with a capital of two millions of dollars, be and the same is hereby established in the City of Mobile, to be styled the Branch of the Bank of the State of Alabama, at Mobile.

Sect. 2. And be it further enacted, That, for the management of the concerns of said Branch Bank, the Legislature shall annually proceed to elect, by joint vote of both Houses, a president and fourteen directors, whose office shall continue for one year, and until their successors be duly qualified; and all subsequent elections for president and directors shall be by joint vote of both Houses of the General Assembly.

Sect. 3. And be it further enacted, That the following powers, rules, conditions, limitations, and restrictions, shall be the fundamental laws of said Branch Bank, viz.: 1st. The President and Directors for the time being, shall have power to elect and remove the cashier and such active officers and clerks as shall be necessary to execute the business of said Branch Bank, and allow them such compensation for their services as shall be reasonable and just. 2d. They shall receive money on deposit and pay out the same to order, free of expense, and in bills of exchange and discount not made payable and negotiable at said Branch Bank, at a rate of interest not exceeding six per cent. per annum, and all notes that have from six to nine months to run, may be discounted at a rate of interest not to exceed seven per cent. per, and all notes that have from nine to twelve months to run, may in like manner be discounted, at a rate of interest not to exceed eight per cent. per annum.

Sect. 3. (3d) In case of vacancy by death, resignation, or removal out of the State of any director, a *a* majority of the Directors shall fill such vacancy, and the director or directors appointed shall hold his or their office during the unexpired term of such director or directors.

Sect. 4. (4th) In case of death, resignation, or removal out of the State, of the President, unless such removal be temporary, and he has permission of the Board of Directors, the Directors shall appoint one of their own body President, who shall serve until his successor shall be elected by the next General Assembly. No person who is not a citizen of this State, or who is a director of any other Bank, or copartner of any such director, shall be eligible as president or director of said Bank. 5th. Not less than six of the directors shall constitute a board for the transaction of business, of whom the President shall always be one, except in case of sickness or necessary

absence, in which event the Board may appoint for the time being a president pro tempore. 6th. The Directors shall keep fair and regular entries of all their proceedings, in a well-bound book to be provided for that purpose; and upon all questions where one director may require it, the yeas and nays shall be duly recorded on the minutes, and those minutes shall at all times, on demand, be produced to the Legislature, or any committee thereof who may be duly authorized to require the same; and on all such questions every member present shall be required to vote.

7th. The President, Directors, Cashier, and officers and servants, shall take and subscribe the following oath, before entering on the discharge of the duties of their respective offices, to wit: I solemnly swear, or affirm, as the case may be, that I will faithfully and correctly, to the best of my skill and ability, discharge the duties reposed in me as of the Branch of the Bank of the State of Alabama, at Mobile; and that while I am such, I will not violate the provisions of an Act entitled "An Act to regulate the rate of interest, passed December 17th, 1819, so long as I continue to discharge the duties of said office, so help me God.

Sect. 4. And be it further enacted, That every President and Cashier, before he enters on the execution of his duty, shall give bond, with two or more securities, in a sum not less than fifty thousand dollars, to the satisfaction of the Directors, conditioned for his good behavior; and the Teller and Clerk shall give security in a sum not less than ten nor more than twenty thousand dollars; which bond shall not be void upon any one or more recovery, conditioned as aforesaid.

Sect. 5. And be it further enacted, That the President and Directors shall have power to issue notes, signed by the President, and countersigned by the Cashier, not under the denomination of one dollar, on the behalf of said Branch Bank, for such sums and with such devices as they may deem most expedient and safe; and they shall also be capable of exercising such other powers and authorities as may be necessary for the well governing and ordering the affairs of said Branch Bank, and of promoting its interest and its credit.

Sect. 6. And be it further enacted, That it shall be the duty of the President and Directors to furnish to the General Assembly, within the first week of every session, statements of the amount of the capital of said Branch Bank, and of the debts due to the same, of the moneys deposited therein, of the notes in circulation, and of the cash on hand, together with all other property of said Branch Bank, both real and personal; and the General Assembly shall have a right to inspect such general accounts in the books of the Branch Bank, as shall relate to the said statements, and shall, when it may be deemed necessary, appoint a joint committee of both Houses of the General Assembly for the purpose, with full powers to send for persons and papers; provided that nothing in this clause shall imply

a right of inspecting the deposits of any private individual or individuals, or any body, politic or corporate, with the Branch Bank.

Sect. 7. And be it further enacted, That if any person or persons shall be indebted to said Branch Bank, as maker or indorser of any note, bill, or bond, expressly made payable or negotiable at said Branch Bank, and shall delay payment thereof, it shall be lawful for the President of the Branch Bank, after having thirty days' notice thereof, to move the Circuit Court of the County of Mobile, on producing to said Court before which the motion is made, the certificate of the President of the Branch Bank that the debt is really and bona fide the property of the said Branch Bank, for judgment, and all the debts due by said Branch Bank by bond, bill, note, or otherwise, to any individual or body corporate, may be sued for in like manner.

Sect. 8. And be it further enacted, That if any of the officers of the said Branch Bank shall embezzle or fraudulently convert to his or their own use any sum of money, bank note, bill of exchange, check, bond, or other security, placed under his care by virtue of his said office, he or they, his or their aider or abettors and counsellors, upon conviction thereof, shall be judged guilty of felony, and sentenced to imprisonment in the public jail in the county in which the offence has been committed, for a term not less than twelve months, and there remain until he or they shall make good all the damages which the Bank may have sustained by his or their misconduct, and be fined at the discretion of the jury trying the offence, and shall forever thereafter be disqualified from holding any office of profit or trust in this State, and shall moreover be liable for the sum so embezzled.

Sect. 9. And be it further enacted, That it shall not be lawful for the Directors, Cashier, or other officers of the said Branch Bank, or any member of the General Assembly, to become security for each other, or any other person or persons at said Branch Bank.

Sect. 10. And be it further enacted, That it shall not be lawful for the said President and Directors of the said Branch Bank to commence operations by discounting or issuing any notes or bills, until one-half of the capital stock of said Branch Bank shall be had in specie in its vaults.

Sect. 11. And be it further enacted, That the total amount of the debts which the said Branch Bank shall at any one time owe, whether by bond, note, bill, or contract, shall not exceed thrice the amount of capital over and above the moneys then actually deposited in Bank for safe keeping, unless the contracting of any greater debt shall have been previously authorized by law of this State, and in case of excess the Directors under whose administration it shall happen, shall be liable for the same in their private capacities, and an action of debt may in such case be brought against them, or any of them, their or any of their heirs, executors, or administrators, in any Court

of this State having jurisdiction, by any creditor or creditors of said Branch Bank, and may be prosecuted to judgment and execution, any condition, covenant, and argument to the contrary notwithstanding, but this shall not be so construed as to exempt said Bank, or the lands, tenements, goods, or chattels, of the same, and on their insufficiency, the State of Alabama, from being also liable for and being chargeable with the said excess. Such of the said Directors who may have been absent when said excess was contracted or credited, or may have dissented from the resolution or act by which the same was contracted or credited, may respectively exonerate themselves from being individually liable by entering, if present, their dissent on the books of the Bank at the time the debt may be so contracted, and forthwith give notice of the same to the Comptroller of the State.

Sect. 12. And be it further enacted, That the credit of the State of Alabama is hereby pledged for the ultimate redemption and payment of all notes issued and all debts contracted by said Branch Bank.

Sect. 13. And be it further enacted, That the remedy for collecting debts shall be reciprocal, for and against the said Branch Bank.

Sect. 14. And be it further enacted, That the Governor, Comptroller, and Treasurer of the State, and President of the Bank of the State of Alabama, be, and they are hereby authorized and required, to issue certificates of State Stock, to an amount not exceeding two millions of dollars, to bear an interest not exceeding five per cent. per annum, payable semi-annually, at the Branch Bank at Mobile, the Bank of the State of Alabama, or at such other place as may be agreed upon, redeemable at the expiration of thirty years, or at any time thereafter that the State may choose; provided that the certificates of stock shall be drawn in sums of from one to ten thousand dollars each; and it shall be the duty of the Treasurer of the State to provide a suitable book, and register the said certificates therein, and then deliver the same to the President and Directors of said Branch Bank, taking their receipts for the same; and it shall be the duty of the said President and Directors to cause said certificates to be sold for cash, at not less than a par value, and for such premium as they can command above their par value, and the sum to be realized shall be applied and compose the capital of said Branch of the Bank of the State of Alabama, at Mobile.

Sect. 15. And be it further enacted, That to secure the regular and punctual payments of the interest semi-annually, and the ultimate redemption of said stock, all the revenue of the State (except the University Fund, the three per cent. fund, and the fund arising from the sale of the sixteenth sections), shall be, and the same is hereby pledged, and in case of a deficiency, the faith of the State is

hereby pledged to provide such additional means as may be necessary.

Sect. 16. And be it further enacted, That it shall be the duty of the President and Directors of the Bank of the State of Alabama, to appoint annually, a committee or committees, of not less than two of their Board, whose duty it shall be to visit the several Branches of said Bank annually, in the month of October, and at such other times as they deem proper, and make a thorough and minute investigation of the affairs, transactions, and condition of the said Branches; and the said committees are hereby invested with all the powers with respect to said Branches which the joint committees of the General Assembly to examine the condition of the State Bank have in reference to it. It shall be the duty of said committees to make full reports of their several examinations to the President and Directors of *of* the Bank of the State of Alabama, who shall report the same to the General Assembly of this State, within the first week of each annual session.

Sect. 17. And be it further enacted, That each member of the committee contemplated by the foregoing sections, shall receive four dollars for every thirty miles in travelling to and from said Branch Banks, and four dollars for every day that they may be engaged in the examination of said Branches.

Approved 4th December, 1832.

SECRETARY OF STATE'S OFFICE, ALA.,
MONTGOMERY, March 15, 1854.

I, Vincent M. Benham, Secretary of State of the State of Alabama, do hereby certify, that the foregoing acts, approved the 4th December, 1832, is a true copy taken from the original roll, now on file in this office.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the great seal of the State, in the City of Montgomery, the day and year above written.

V. M. BENHAM,
Secretary of State.

The United States of America, Eastern District of Arkansas.

I, William Field, Clerk of the Circuit Court of the United States, in and for the Eastern District of Arkansas, do hereby certify, that the foregoing transcript contains a full and complete copy of the record, papers, and proceedings in the case of the Branch of the Bank of the State of Alabama, at Mobile, against Margaret McRea, and against Bracy McRea, as administrator of John D. Bracy, deceased, as appears now of record in my said office.

[SEAL.] In testimony whereof, I have hereunto set my hand as Clerk, and affixed the seal of said Court, this 3d day of December, A.D. 1855, and the 80th year of American Independence.

Attest,

WM. FIELD,
Clerk.

3111.

SUPREME COURT OF THE UNITED STATES.

No. 128.

HENRY WORTHINGTON AND JOHN HENRY WARREN, PL'FFS IN ER.,

vs.

THE LESSEE OF ARAMINTA BROOKE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-five—

Present: The honorable R. B. Taney, Chief Justice of the Supreme Court of the United States; William F. Giles, judge of Maryland district; Wm. M. Addison, esquire, Attorney; John W. Watkins, esquire, marshal; Thomas Spicer, clerk:

Among others were the following proceedings, to wit:

RICHARD ROE, lessee of ARAMINTA BROOKE,
vs.
HENRY WORTHINGTON, JOHN HENRY WARREN.

Be it remembered that heretofore, to wit, on the twentieth day of March, in the year of our Lord one thousand eight hundred and fifty-four, Richard Roe, lessee of Araminta Brooke, by R. Johnson, his attorney, declared in the circuit court here against John Doe, a citizen of the State of Maryland, in a plea of trespass in ejectment, with notice thereto annexed, in form following, to wit:

Declaration.

CIRCUIT COURT OF THE UNITED STATES,
For the fourth circuit in and for the district of Maryland, Maryland district to wit:

John Doe, a citizen of the State of Maryland was attached to answer unto Richard Roe of a plea wherefore he, the said John, with force and arms, &c., at the district aforesaid, entered into one undivided fourth part of all of two several tracts or parcels of plantable land, called for the first of said two tracts, "Black Walnut Thicket," and "Content," contiguous to each other, lying and being in Prince George's county, in the State of Maryland, containing seven hundred acres, more or less, and being for the second of said two tracts part of the tract of land called "Addition to Brookfield," situate, lying, and being in Prince George's county aforesaid, and said to be bounded as follows: "beginning at large flat stone planted in the earth, being the second boundary of the whole tract aforesaid, and running thence south fifty-seven and a fourth degrees east, one hundred and twenty perches to a stone; thence north eighty-

seven degrees east, fifty-two perches; thence north fifty-five degrees east, forty perches, to a marked persimmon tree standing in a branch, and near the fork of said branch; thence north twenty-five degrees west, one hundred and twenty-nine perches; thence south fifty-seven degrees west, one hundred and twenty-nine perches; thence south fifty-seven degrees west, one hundred and twenty-six and a half perches to the beginning, containing about one hundred and fifty acres, more or less; each and all of the said two tracts being in the district aforesaid, with the appurtenances, which Araminta Brooke, a citizen of the State of Virginia, to the said Richard demised for a term of years, which is not yet expired, and him, the said Richard, from his said farm ejected.

And whereupon the said Richard, by Reverdy Johnson, his attorney, complains that the said Araminta Brooke, on the first day of March, in the year eighteen hundred and fifty-four, at the district aforesaid, had demised unto the said Richard one undivided fourth part of all the tracts or parcels of land with the appurtenances in the first count above particularly mentioned and described, to have and to hold the said premises, with the appurtenances, to him, the said Richard and his assigns, from thenceforth for and during and unto the full end and term of fifteen years from thence next ensuing and fully to be complete and ended. By virtue of which demise the said Richard entered into all and singular the premises aforesaid, with the appurtenances thereunto belonging, and was thereof possessed and the said Richard being thereof possessed, the said John Doe, afterwards, to wit, on the day and year aforesaid, with force and arms, &c., entered into the said several premises, with the appurtenances, which the said Araminta Brooke demised to the said Richard in manner aforesaid, and him, the said Richard, from the premises aforesaid ejected, and other outrages to him the said Richard then and there did, to the great damage of him, the said Richard, and against the peace, government and dignity of the United States, &c.; wherefore the said Richard saith he is prejudiced and hath sustained damage to the value of one thousand dollars, and therefore he brings suit, &c.

REVERDY JOHNSON,
Atty. for plaintiff.

Notice.

To John Henry Warren, Sarah M. Worthington, William Worthington, and Henry Worthington, Prince George's county, Maryland:

I am informed that you are in possession of a claim title to the premises in this declaration mentioned, or to some part thereof; and I, being sued in this action as casual ejector only, and having no claim or title to the same, do advise you to appear, on the first

Monday in April next, in the circuit court of the United States for the Maryland district, by some attorney of that court, and then and there, by rule of the same court, to cause yourself to be made defendant in my stead; otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession.

Dated this twentieth day of March, in the year eighteen hundred and fifty-four. Your loving friend,

JOHN DOE.

Copies of which said declaration and notice were made and sent to the marshal for the Maryland district aforesaid, thereon endorsed "copy to be served on tenant in possession, or to set up on the premises if no tenant, &c."

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-four, and being the day of the return of the service of the aforegoing declaration in ejectment, comes into the circuit court here the said Richard Roe, lessee as aforesaid of the said Araminta Brooke, and the marshal of the Maryland district aforesaid, to wit, John W. Watkins, gentleman, to whom copies of the said declaration and notice in ejectment aforesaid were in form aforesaid made and sent, certifies the service thereof to court here, in form following, to wit:

Marshal's return.

JOHN DOE
v.
RICHARD ROE.

Copy of war. and notice served on Henry Worthington, tenant in possession of Thicket and Content, on the 25th day of March, 1854. Copy of war. and notice served on John Henry Warren, and put up on the premises of Addition to Brookfield, on the 26th day of March, 1854.

JOHN A. GOLDSBOROUGH,
Dep. Marshal, Prince George's county Md.

Whereupon the said lessee of the said Araminta Brooke, by his attorney aforesaid, prays that the said Henry Worthington and John Henry Warren, to his declaration aforesaid, may appear and answer, or in default thereof judgment be rendered against the said John Doe, the casual ejector.

Whereupon the said Henry Worthington and John Henry Warren, by Thomas S. Alexander and William Schley, their attorneys, appear in the circuit court here to be made defendants in the place of the said John Doe, the casual ejector.

Whereupon it is ruled by the court here, with the consent of the said Richard Roe, lessee of the said Araminta Brooke, by his at-

seven degrees east, fifty-two perches; thence north fifty-five degrees east, forty perches, to a marked persimmon tree standing in a branch, and near the fork of said branch; thence north twenty-five degrees west, one hundred and twenty-nine perches; thence south fifty-seven degrees west, one hundred and twenty-nine perches; thence south fifty-seven degrees west, one hundred and twenty-six and a half perches to the beginning, containing about one hundred and fifty acres, more or less; each and all of the said two tracts being in the district aforesaid, with the appurtenances, which Araminta Brooke, a citizen of the State of Virginia, to the said Richard demised for a term of years, which is not yet expired, and him, the said Richard, from his said farm ejected.

And whereupon the said Richard, by Reverdy Johnson, his attorney, complains that the said Araminta Brooke, on the first day of March, in the year eighteen hundred and fifty-four, at the district aforesaid, had demised unto the said Richard one undivided fourth part of all the tracts or parcels of land with the appurtenances in the first count above particularly mentioned and described, to have and to hold the said premises, with the appurtenances, to him, the said Richard and his assigns, from thenceforth for and during and unto the full end and term of fifteen years from thence next ensuing and fully to be complete and ended. By virtue of which demise the said Richard entered into all and singular the premises aforesaid, with the appurtenances thereunto belonging, and was thereof possessed and the said Richard being thereof possessed, the said John Doe, afterwards, to wit, on the day and year aforesaid, with force and arms, &c., entered into the said several premises, with the appurtenances, which the said Araminta Brooke demised to the said Richard in manner aforesaid, and him, the said Richard, from the premises aforesaid ejected, and other outrages to him the said Richard then and there did, to the great damage of him, the said Richard, and against the peace, government and dignity of the United States, &c.; wherefore the said Richard saith he is prejudiced and hath sustained damage to the value of one thousand dollars, and therefore he brings suit, &c.

REVERDY JOHNSON,
Atty. for plaintiff.

Notice.

To John Henry Warren, Sarah M. Worthington, William Worthington, and Henry Worthington, Prince George's county, Maryland:

I am informed that you are in possession of a claim title to the premises in this declaration mentioned, or to some part thereof; and I, being sued in this action as casual ejector only, and having no claim or title to the same, do advise you to appear, on the first

Monday in April next, in the circuit court of the United States for the Maryland district, by some attorney of that court, and then and there, by rule of the same court, to cause yourself to be made defendant in my stead; otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession.

Dated this twentieth day of March, in the year eighteen hundred and fifty-four. Your loving friend,

JOHN DOE.

Copies of which said declaration and notice were made and sent to the marshal for the Maryland district aforesaid, thereon endorsed "copy to be served on tenant in possession, or to set up on the premises if no tenant, &c."

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-four, and being the day of the return of the service of the aforegoing declaration in ejectment, comes into the circuit court here the said Richard Roe, lessee as aforesaid of the said Araminta Brooke, and the marshal of the Maryland district aforesaid, to wit, John W. Watkins, gentleman, to whom copies of the said declaration and notice in ejectment aforesaid were in form aforesaid made and sent, certifies the service thereof to court here, in form following, to wit:

Marshal's return.

JOHN DOE
v.
RICHARD ROE.

Copy of war. and notice served on Henry Worthington, tenant in possession of Thicket and Content, on the 25th day of March, 1854. Copy of war. and notice served on John Henry Warren, and put up on the premises of Addition to Brookfield, on the 26th day of March, 1854.

JOHN A. GOLDSBOROUGH,
Dep. Marshal, Prince George's county Md.

Whereupon the said lessee of the said Araminta Brooke, by his attorney aforesaid, prays that the said Henry Worthington and John Henry Warren, to his declaration aforesaid, may appear and answer, or in default thereof judgment be rendered against the said John Doe, the casual ejector.

Whereupon the said Henry Worthington and John Henry Warren, by Thomas S. Alexander and William Schley, their attorneys, appear in the circuit court here to be made defendants in the place of the said John Doe, the casual ejector.

Whereupon it is ruled by the court here, with the consent of the said Richard Roe, lessee of the said Araminta Brooke, by his at-

torney aforesaid, and the said Henry Worthington and John Henry Warren, who claim the title in question, by their attorneys aforesaid, that the said Henry Worthington and John Henry Warren be admitted defendants in the place of the said John Doe, the casual ejector, and that they immediateiy receive a declaration and plead thereto the general issue; and at the trial to be had the said Henry Worthington and John Henry Warren should appear in their proper person, or by their attorney or counsel, and confess lease, entry, and actual ouster and expulsion of so much of the premises in the said declaration of the said lessee of the said Araminta Brooke as aforesaid as is in the possession of the said Henry Worthington and John Henry Warren, or any other person claiming by or under their title, or in default thereof, judgment be entered against the defendant, John Doe, the casual ejector; but that prosecution be staid against him until he should make default in any of the premises.

And it is further ruled by the court here, with the consent of counsel, that if, by reason of such default, the said Richard Roe, lessee as aforesaid, should become non-suit at the trial, the said Henry Worthington and John Henry Warren should take no advantage thereof, but should pay the said Richard Roe, lessee as aforesaid, his costs, &c.

And it is further ruled by the court here, that if, upon the trial of the issue, a verdict should be given for the said Henry Worthington and John Henry Warren, or the said Richard Roe, lessee as aforesaid, should prosecute his declaration for any other cause than the non-confessing lease, entry, and ouster as aforesaid, the said Araminta Brooke, lessor of the said Richard Roe, should pay the costs, &c.

And thereupon the said Richard Roe, lessee as aforesaid, declares against the said Henry Worthington and John Henry Warren in the plea aforesaid, in manner and form following, to wit:

Declaration against Henry Worthington and John Henry Warren.

Henry Worthington and John Henry Warren, citizens of the State of Maryland, were attached to answer unto Richard Roe of a plea wherefore they, the said Henry Worthington and John Henry Warren, with force and arms, &c., at the district aforesaid, entered into one undivided fourth part of all of two several tracts or parcels of plantable land called for the first part of said two tracks "Black Walnut Thicket" and "Content," contiguous to each other, lying and being in Prince George's county, in the State of Maryland, containing seven hundred acres, more or less; and being for the second of said two tracts part of the tract of land called "Addition to Brookfield," situate, lying, and being in Prince George's county aforesaid, and said to be bounded as follows:—

Beginning at a large flat stone planted in the earth, being the

second boundary of the whole tract aforesaid, and running thence south fifty-seven and a fourth degrees east, one hundred and twenty perches, to a stone; thence north eighty-seven degrees east, fifty-two perches; thence north fifty-five degrees east, forty perches, to a marked persimmon tree, standing in a branch, and near the fork of said branch; thence north twenty-five degrees west, one hundred and twenty-nine perches; thence south fifty-seven degrees west, one hundred and twenty-six and a half perches, to the beginning; containing about one hundred and fifty acres, more or less, each and all of the said two tracts being in the district aforesaid, with the appurtenances, which Araminta Brooke, a citizen of the State of Virginia, to the said Richard demised for a term of years, which is not yet expired, and him the said Richard, from his said farm ejected.

And whereupon the said Richard, by Reverdy Johnson, his attorney, complains that the said Araminta Brooke, on the first day of March, in the year eighteen hundred and fifty-four, at the district aforesaid, had demised unto the said Richard one undivided fourth part of all the tracts or parcels of land, with the appurtenances in the first count above particularly mentioned and described, to have and to hold the said premises, with the appurtenances, to him, the said Richard, and his assigns, from thenceforth for and during and unto the full end and term of fifteen years from thence next ensuing, and fully to be complete and ended. By virtue of which demise the said Richard entered into all and singular the premises aforesaid, with the appurtenances thereunto belonging, and was thereof possessed; and the said Richard, being so thereof possessed, the said Henry Worthington and John Henry Warren, afterwards, to wit, on the day and year aforesaid, with force and arms, &c., entered into the said several premises, with the appurtenances, which the said Araminta Brooke demised to the said Richard in manner aforesaid, and him, the said Richard, from the premises aforesaid ejected, and other outrages to him, the said Richard, then and there did, to the great damage of him, the said Richard, and against the peace, government and dignity of the United States; wherefore the said Richard saith he is prejudiced and hath sustained damage to the value of one thousand dollars, and therefore he brings suit, &c.

R. JOHNSON,
Att'y for Pltff.

Whereupon the said Richard Roe, lessee as aforesaid, by his attorney aforesaid, prays that the said Henry Worthington and John Henry Warren to his declaration aforesaid may answer.

Thereupon, on motion of the said Henry Worthington and John Henry Warren, by their attorneys aforesaid, leave is granted by the court here to the said Henry Worthington and John Henry Warren to ascertain their defence, and to answer to the declara-

tion aforesaid of the said Richard Roe, lessee as aforesaid, in the plea aforesaid, until the first Monday in November next. The same day is given to the said Richard Roe, &c.

At which said first Monday in November, in the year of our Lord one thousand eight hundred and fifty-four, till which day the said Henry Worthington and John Henry Warren had leave to ascertain their defence, and then to answer the declaration aforesaid of the said Richard Roe, lessee as aforesaid, in the plea aforesaid, comes again into the circuit court here, as well the said Richard Roe, lessee as aforesaid, by his attorney aforesaid, as the said Henry Worthington and John Henry Warren, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid; by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-five, come again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

Plea.

And the said Henry Worthington and John Henry Warren, by their attorneys aforesaid, defend the force and injury when, &c., and say, that they are not guilty of the trespass and ejectment aforesaid, in the declaration aforesaid mentioned, in manner and form as the said Richard Roe, lessee as aforesaid, above complains against them, and of this they put themselves upon the country.

Issue.

And the said Richard Roe, lessee as aforesaid, by his attorney aforesaid, in like manner, &c. Whereupon, for trying the issue aforesaid, between the parties aforesaid within joined, it is ordered by the court here that a jury thereon appear before the court here immediately, by whom, &c., and who neither, &c., to recognize, &c., because, as well, &c. Thereupon, it is ordered by the court here that twenty persons, from the pannel of petit jurors returned to the court here by the marshal of the Maryland district aforesaid, be drawn by ballot; and thereupon the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said list, the remaining twelve persons being called come, to wit:

Jury.

Thomas Hope, John Owings, William Johnson, Charles W. Ben-

fifty-five degrees west, four and one-quarter perches; south eight ney, Robert Barry, William P. Patterson, Elisha Marriott, Philip Hammond, Edward G. Starr, Jacob Haase, William Kennedy, David E. Price, who, being empannelled and sworn to say the truth in the premises, upon their oath, do say:

Verdict.

That the defendant, Henry Worthington, is guilty of the trespass and ejectment in the declaration mentioned, upon the tracts of land therein stated, called Black Walnut Thicket and Content, in manner and form as the said lessee complains against him, and which is contained within the metes and bounds, courses and distances set out and described in the paper hereto annexed, and made for that purpose a part of this verdict, being a deed from Walter B. Brooke, of Prince George's county, and State of Maryland, Alexander Middleton, and Elizabeth A. Middleton, his wife, of Charles county, and said State, to Michael B. Carroll, dated the 29th day of January, 1842; and they assess the damages of said lessee, by occasion of said trespass and ejectment, to one dollar. And as to the residue of the land in said declaration mentioned, called Addition to Brookfield, and the trespass and ejectment thereupon complained of in said declaration, they find that the defendants are in nowise guilty thereof.

Paper referred to, and made part of the verdict.

This indenture, made this twenty-ninth day of January, in the year of our Lord one thousand eight hundred and forty-two, between Walter B. Brooke, of Prince George's county, in the State of Maryland, and Alexander Middleton and Elizabeth A. Middleton, his wife, of Charles county, in the said State, of the one part, and Michael B. Carroll, of Prince George's county, and State aforesaid, of the other part, witnesseth, that for and in consideration of the sum of fifteen thousand dollars, current money, by the said Michael B. Carroll to the said Walter B. Brooke, and Alexander Middleton, and Elizabeth A. Middleton, in hand paid, at and before the sealing and delivery of these presents, the receipt of which they doth hereby acknowledge, the said Walter B. Brooke, and Alexander Middleton, and Elizabeth A. Middleton, his wife, hath bargained and sold, aliened, enfeoffed, and by these presents doth give, grant, bargain, and sell, alien, enfeoff, release, convey, and confirm unto the said Michael B. Carroll, his heirs and assigns, all these tracts, parts of tracts, or parcels of land, lying and being in Prince George's county aforesaid, called "Black Walnut Thicket," and "Content," contiguous to each other, and contained within the following metes and bounds, courses and distances, to wit:

Beginning at a stone standing near a small branch, and also near two locusts, it being the fourth boundary of the aforesaid tract of land called "Black Walnut Thicket," and running down the said

branch, dividing the lands of the said Carroll and Joseph A. Turner by the following courses and distances, to wit: North six and one-quarter degrees east, five perches; north thirty-two degrees east, twelve and one-half perches; north fifty-one degrees east, nine and one-fifth perches; north thirty-one degrees east, eight and three-quarter perches; north fifty-five and three-quarter degrees east, eight perches; north twenty-four degrees east, sixteen and two-fifth perches; north three and one-quarter degrees east, fifteen perches; north thirty-two degrees west, seven and two-fifth perches; north four degrees west, six and one-third perches; north twenty-one and one-half degrees west, six perches; north forty-one degrees west, nineteen and three-quarter perches; north seventy-two and one-quarter degrees west, seven and two-fifth perches; north twenty-seven and one-half degrees east, eighteen and one-third perches; north eighteen and one-half degrees east, seven perches; north five degrees east, nine perches; north fifty-one degrees west, six and one-half perches; north two degrees east, twelve perches; north twenty-one degrees west, seven perches, to the main branch, then up with said branch as follows: South forty-one and one-half degrees west, eight perches; south sixty-three and one-half degrees west, four perches; north fifty-eight degrees west, four perches; north twenty-one and one-half degrees west, seven perches; south eighty-three and one-quarter degrees west, five and one-quarter perches; south thirty-seven degrees west, eleven and three-quarter purches; north forty-six and one-half degrees west, five perches; south eighty-five degrees west, four and three-quarter perches; north fifty-one degrees west, seven and one-quarter perches; north thirty-five degrees west, four and three-fifth perches; south eighty-five degrees west, three perches; north twenty-eight degrees west, four and one-fifth perches; north thirty-two and one-quarter degrees west, five and one-eighth perches; north twelve degrees west, seven and one-third perches; south sixty-six degrees west, five and four-fifth perches; north eighty-seven degrees west, seven and two-fifth perches; north eighty-one degrees west, nine perches; south seventy-eight and one-half degrees west, six perches; north fifty-four and one-half degrees west, five and three-fifth perches; south eighteen degrees west, four and one-eighth perches; south sixty-six and one-half degrees west, five perches; north seventy-two degrees west, four and two-fifth perches; west, *four* four-fifth perches; south sixty-four and one-half degrees west, four perches; north thirty-nine and three-quarter degrees west, eight perches; south sixty-seven degrees west, three and one-half perches; north sixty-eight degrees west, five perches; north five degrees west, three and two-fifth perches; north sixty-six degrees west, three and three-fifth perches; south sixty-six and one-half degrees west, seven and three-fifth perches; north fifty-six degrees west, ten perches; south sixty-five and one-quarter degrees west, five and one-fifth perches; south

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and one-half degrees west, three perches; south twenty degrees west, four and two-third perches; south eighty and three-quarter degrees west, three perches; south sixty-four and three-quarter degrees west, four perches; south fifty-one and one-half degrees west, seven and one-half perches; north sixty-six degrees west, five perches; south thirty-nine degrees west, three and four-fifth perches; north forty-seven degrees west, twenty-three perches; south sixty-seven and three-quarter degrees west, nine perches; south thirty-seven and three-quarter degrees west, seven perches; south thirty-six and one-half degrees east, five and two-fifth perches; south four degrees east, six perches; south nineteen and one-half degrees west, five perches; south fifty-seven and three-quarter degrees west, six and three-fifth perches; south thirty-eight degrees west, seven perches; south fifty-three and one-quarter degrees west, eight perches; south three degrees west, four perches; then leaving the branch, and running south eighty-one degrees east, two and three-fifth perches, to a small ash tree, it being the beginning of a six and one-eight acre lot, sold out of "Black Walnut Thicket," by Walter and Oswald Brooke to Thomas Contee, now owned by William Connick; then running from the said by the bounds and distances of said lot, south sixty-six degrees east, eight perches; south thirty-four and one-half degrees east, seven perches; south eight and one-quarter degrees west, thirty-four perches, to a stone near a poplar; south thirty-six and one-quarter degrees east, ten perches; south sixty-two and one quarter degrees west, twelve perches; north thirty-three and one-quarter degrees west, four perches; north forty-two degrees west, twenty-four perches; north fifty-one and one-quarter degrees west, seven perches; north forty-six and three quarter degrees east, eleven and three-quarter perches, to a stake on the north side of Deep Creek; north seventy-nine and one-half degrees west, fourteen and three-fifth perches; running up the branch west, ten perches; north fifty-seven degrees west, four and three-quarter perches; south sixty and one-half degrees west, five perches; south sixty-two and one-half degrees east, eight perches to stone; south thirty-six and three-quarter degrees west, one hundred and seven perches to a stone, it being the line dividing the lands of the said Carroll from George N. Walls; south nineteen and one-half degrees east, twelve perches, to a large red oak; south thirty-two and one-half degrees east, sixteen perches, to an old poplar, it being the second bodry. of "Black Walnut Thicket" and first of Content; south thirty-four degrees west, thirty perches, to a dog-wood stake in the woods; south thirty-two and one-half degrees east, two hundred and thirty-three perches, to a red oak, it being the dividing line of M. B. Carroll and Clement Hill; south eighty and one-quarter degrees east, one hundred and sixty perches, to a black oak standing on an ivy hill; thence north six and one-quarter degrees east, two hundred and sixty-six perches, to the beginning, containing and now laid out for six hundred and

branch, dividing the lands of the said Carroll and Joseph A. Turner by the following courses and distances, to wit: North six and one-quarter degrees east, five perches; north thirty-two degrees east, twelve and one-half perches; north fifty-one degrees east, nine and one-fifth perches; north thirty-one degrees east, eight and three-quarter perches; north fifty-five and three-quarter degrees east, eight perches; north twenty-four degrees east, sixteen and two-fifth perches; north three and one-quarter degrees east, fifteen perches; north thirty-two degrees west, seven and two-fifth perches; north four degrees west, six and one-third perches; north twenty-one and one-half degrees west, six perches; north forty-one degrees west, nineteen and three-quarter perches; north seventy-two and one-quarter degrees west, seven and two-fifth perches; north twenty-seven and one-half degrees east, eighteen and one-third perches; north eighteen and one-half degrees east, seven perches; north five degrees east, nine perches; north fifty-one degrees west, six and one-half perches; north two degrees east, twelve perches; north twenty-one degrees west, seven perches, to the main branch, then up with said branch as follows: South forty-one and one-half degrees west, eight perches; south sixty-three and one-half degrees west, four perches; north fifty-eight degrees west, four perches; north twenty-one and one-half degrees west, seven perches; south eighty-three and one-quarter degrees west, five and one-quarter perches; south thirty-seven degrees west, eleven and three-quarter purches; north forty-six and one-half degrees west, five perches; south eighty-five degrees west, four and three-quarter perches; north fifty-one degrees west, seven and one-quarter perches; north thirty-five degrees west, four and three-fifth perches; south eighty-five degrees west, three perches; north twenty-eight degrees west, four and one-fifth perches; north thirty-two and one-quarter degrees west, five and one-eighth perches; north twelve degrees west, seven and one-third perches; south sixty-six degrees west, five and four-fifth perches; north eighty-seven degrees west, seven and two-fifth perches; north eighty-one degrees west, nine perches; south seventy-eight and one-half degrees west, six perches; north fifty-four and one-half degrees west, five and three-fifth perches; south eighteen degrees west, four and one-eighth perches; south sixty-six and one-half degrees west, five perches; north seventy-two degrees west, four and two-fifth perches; west, *four* four-fifth perches; south sixty-four and one-half degrees west, four perches; north thirty-nine and three-quarter degrees west, eight perches; south sixty-seven degrees west, three and one-half perches; north sixty-eight degrees west, five perches; north five degrees west, three and two-fifth perches; north sixty-six degrees west, three and three-fifth perches; south sixty-six and one-half degrees west, seven and three-fifth perches; north fifty-six degrees west, ten perches; south sixty-five and one-quarter degrees west, five and one-fifth perches; south

and one-half degrees west, three perches; south twenty degrees west, four and two-third perches; south eighty and three-quarter degrees west, three perches; south sixty-four and three-quarter degrees west, four perches; south fifty-one and one-half degrees west, seven and one-half perches; north sixty-six degrees west, five perches; south thirty-nine degrees west, three and four-fifth perches; north forty-seven degrees west, twenty-three perches; south sixty-seven and three-quarter degrees west, nine perches; south thirty-seven and three-quarter degrees west, seven perches; south thirty-six and one-half degrees east, five and two-fifth perches; south four degrees east, six perches; south nineteen and one-half degrees west, five perches; south fifty-seven and three-quarter degrees west, six and three-fifth perches; south thirty-eight degrees west, seven perches; south fifty-three and one-quarter degrees west, eight perches; south three degrees west, four perches; then leaving the branch, and running south eighty-one degrees east, two and three-fifth perches, to a small ash tree, it being the beginning of a six and one-eight acre lot, sold out of "Black Walnut Thicket," by Walter and Oswald Brooke to Thomas Contee, now owned by William Connick; then running from the said by the bounds and distances of said lot, south sixty-six degrees east, eight perches; south thirty-four and one-half degrees east, seven perches; south eight and one-quarter degrees west, thirty-four perches, to a stone near a poplar; south thirty-six and one-quarter degrees east, ten perches; south sixty-two and one quarter degrees west, twelve perches; north thirty-three and one-quarter degrees west, four perches; north forty-two degrees west, twenty-four perches; north fifty-one and one-quarter degrees west, seven perches; north forty-six and three quarter degrees east, eleven and three-quarter perches, to a stake on the north side of Deep Creek; north seventy-nine and one-half degrees west, fourteen and three-fifth perches; running up the branch west, ten perches; north fifty-seven degrees west, four and three-quarter perches; south sixty and one-half degrees west, five perches; south sixty-two and one-half degrees east, eight perches to stone; south thirty-six and three-quarter degrees west, one hundred and seven perches to a stone, it being the line dividing the lands of the said Carroll from George N. Walls; south nineteen and one-half degrees east, twelve perches, to a large red oak; south thirty-two and one-half degrees east, sixteen perches, to an old poplar, it being the second bodry. of "Black Walnut Thicket" and first of Content; south thirty-four degrees west, thirty perches, to a dog-wood stake in the woods; south thirty-two and one-half degrees east, two hundred and thirty-three perches, to a red oak, it being the dividing line of M. B. Carroll and Clement Hill; south eighty and one-quarter degrees east, one hundred and sixty perches, to a black oak standing on an ivy hill; thence north six and one-quarter degrees east, two hundred and sixty-six perches, to the beginning, containing and now laid out for six hundred and

eighteen acres and one-half of land, more or less, together with all and singular the buildings, improvements, ways, waters, water courses, rights, members, privileges, advantages, and appurtenances thereto belonging, or in anywise appertaining, and all the estate, right, title, and interest, trust, property claim, and demand whatsoever, at law and in equity, of them, the said Walter B. Brooke, Alexander Middleton, and Elizabeth A. Middleton, his wife, of, in, and to the same; to have and to hold the said herein described premises, with the appurtenances thereunto belonging, unto the said Michael B. Carroll, his heirs and assigns, to the only proper use of the said Michael B. Carroll, his heirs and assigns forever.

In testimony whereof, the said Walter B. Brooke, Alexander Middleton, and Elizabeth A. Middleton, his wife, have hereunto set their hands and seals, on the day and year first above written.

WALTER B. BROOKE, [SEAL.]
ALEXANDER MIDDLETON, [SEAL.]
ELIZABETH A. MIDDLETON, [SEAL.]

Signed, sealed, and delivered in presence of—
THOS. HOLLAND,
THO. M. D. BADEN,
As to the first signed.
JOHN F. GARDINER,
JAS. H. A. MIDDLETON.

NOTTINGHAM, 1842.

Received of Michael B. Carroll the sum of fifteen thousand dollars, being the consideration expressed to be paid in the foregoing indenture.

WALTER B. BROOKE,
ALEXANDER MIDDLETON,
ELIZABETH A. MIDDLETON.

STATE OF MARYLAND,
Prince George's county, sct:

Be it remembered, and it is hereby certified, that on this twenty-ninth day of January, one thousand eight hundred and forty-two, before the subscribers, two justices of the peace of the State of Maryland, in and for the county aforesaid, personally appears Walter B. Brooke, he being known to us to be the person who is named and described as and professing to be a party to the foregoing deed or indenture, and doth acknowledge the said indenture or instrument of writing to be his act and deed. In testimony whereof we have hereunto subscribed our names, on the day and year aforesaid.

THOS. HOLLAND,
THOS. M. D. BADEN.

STATE OF MARYLAND,
Charles county, sct:

Be it remembered, and it is hereby certified, that on the twenty-

first day of February in the year of our Lord one thousand eight hundred and forty-two, before the subscribers, two justices of the peace of the State of Maryland, in and for the county aforesaid, personally appears Alexander Middleton and Elizabeth A. Middleton, his wife, they being known to us to be the persons who are named and described as and professing to be parties to the foregoing deed or indenture, and do severally acknowledge the said indenture or instrument of writing to be their respective act and deed. And the said Elizabeth A. Middleton, having signed and sealed said indenture before us, out of the presence and hearing of her husband, and the said Elizabeth A. Middleton being by us examined, out of the presence and hearing of her said husband, whether she doth execute and acknowledge the same freely and voluntarily, and without being induced to do so by fear or threats of or ill-usage of her husband, or by fear of his displeasure, "declareth and saith that she doth." In testimony whereof we hereunto subscribe our names on the day and year aforesaid.

JOHN F. GARDINER,
JAS. H. A. MIDDLETON.

STATE OF MARYLAND,
Charles county, set:

I certify, that John F. Gardiner and James H. A. Middleton, gentlemen, before whom the above acknowledgements were made, and whose names are thereto subscribed, were at the time of so doing two of the State of Maryland justices of the peace, in and for Charles county aforesaid, duly commissioned and sworn.

In testimony whereof I have hereunto subscribed my name and affixed the seal of Charles county court this twenty-second day of February, in the year of our Lord one thousand eight hundred and fifty-two.

[SEAL]

JOHN BARKES,
Clerk of Charles county court.

STATE OF MARYLAND,
Prince George's county, set:

I hereby certify, that the foregoing deed or instrument of writing is truly taken and copied from liber J. J. B., No. 2, folios 206, 207, 208, and 209, one of the land record books of Prince George's county.

In testimony whereof I have hereunto set my hand and affixed the seal of the circuit court for Prince George's county this 7th day of January, A. D. 1852.

[SEAL]

OWEN NORFOLK,
Clerk.

Judgment.

Therefore it is considered by the court here that the said lessee as aforesaid do recover against the said Henry Worthington his term aforesaid, yet to come and unexpired of and in the tracts of land called "Black Walnut Thicket" and "Content," with the appurtenances, in the district aforesaid, wherein the said Henry Worthington is by the jurors aforesaid above found to be guilty of the trespass and ejectment aforesaid; and the sum of one dollar, his damages by the said jurors in manner aforesaid, assessed. And also the sum of by the court here adjudged unto the said lessee, for his costs and charges by him about his suit in this behalf expended, and that he have thereof his execution.

And be the said lessee amerced for his false complaint against the said Henry Worthington and John Henry Warren for the residue of the trespass and ejectment aforesaid, whereof the said Henry Worthington and John Henry Warren are above acquitted by the said jurors in form aforesaid; and the said Henry Worthington and John Henry Warren go thereof, without day, &c. And hereupon the said lessee as aforesaid prays the writ of the United States of America habere facias possessionem, &c., &c., and to him it is granted returnable here, &c.

Memorandum.

Before the jurors aforesaid withdrew from the bar of the court here the said defendants, by their attorneys aforesaid, tendered to the court here the following bill of exceptions, which was by the court here signed and sealed, and which is in form following, to wit:

Defendants' exception.

IN CIRCUIT COURT OF THE UNITED STATES
For the Fourth Circuit and District of Maryland.

ARAMINTA BROOKE'S LESSEE
vs.
HENRY WORTHINGTON, JOHN HENRY WARREN. } April term, 1855.

At the trial of this action the plaintiff to support the issue joined, on his part joined, read in evidence to the jury the following patents:

Patent—Black Walnut Thicket.

Richard Marsham, patent 300 acres.

Charles, absolute lord and proprietary of the province of Maryland

and Avalon, lord baron of Baltimore, to all persons to whom these presents shall come, greeting, in our Lord God:

Know ye, that whereas William Mears, of our said province of Maryland, gentleman, having due unto him within this, our said province, two hundred and fifty acres of land for transporting himself and Elizabeth, his wife, Ann Isaacs, and Francis Hill and Henry Harrison, into this province to inhabit, in the year one thousand six hundred sixty and five; also fifty acres more by assignment from Edward Isaacs for his transportation into this province to inhabit, the same year as appears upon record, did assign all his right, title, and interest of, in, and to three hundred acres of land due to him as aforesaid, unto George Lingam, of Calvert county, the moiety whereof, being also by the said Lingam assigned over unto Richard Marsham, of Calvert county aforesaid, there was surveyed and laid out, for and in the name of the said George Lingam and Richard Marsham, a tract of land in the said county of Calvert, Black Walnut Thicket, for three hundred acres, more or less, and certificate whereof returned to our secretary's office, at our city of St. Mary's, bearing date the sixteenth day of May, anno Domini one thousand six hundred and seventy; and whereas the said George Lingam hath since, by writing under his hand and seal, bearing date the fourteenth day of December last past, bargained, sold, assigned, and set over, unto the said Richard Marsham, all his right, title, and interest of, in, and to the said three hundred acres of land, or any part or parcel thereof, as also appears upon record:—We do therefore hereby grant unto him, the said Richard Marsham, all that tract or parcel of land called Black Walnut Thicket, lying in Calvert county, and beginning at a marked poplar, standing on the west side of the Patuxent river, in the woods, near the south main branch of a creek called Deep creek, and from the said poplar running south-southeast for one hundred and fifty-four perches, to a bounded poplar in a small branch issuing out of the main branch aforesaid, bounded by the said branch, and running east-southeast eighty perches, to an oak marked with four notches in the said branch; and from thence by a line drawn east, and by north for one hundred and sixty perches, to a bounded white oak standing (in) a small branch which issueth out of the main branch aforesaid, bounded on east by the said small branch, for one hundred and forty-eight perches, to a bounded poplar, at the mouth of the said small branch in the said main branch aforesaid, and with the said main branch to the first bounded tree, containing and now laid out for three hundred acres, more or less, together with all the rights, profits, benefits, and privileges thereunto belonging—royal mines excepted, to have and to hold the same unto the said Richard Marsham, his heirs and assigns, forever; to be holden of us, and our heirs, as of our manor of Patuxent, in free and common *soccage*, by fealty only for all manner of service, yielding and paying therefor yearly unto us and our heirs, at our

receipt, at our city of St. Mary's, at the most usual feasts in the year, viz, at the feast of the Annunciation of the Blessed Virgin Mary, and at the feast of St. Michael, the archangel, by even and equal portions, the rent of six shillings sterling in silver and gold; and a fine upon every alienation of the said land, or any part or parcel thereof, of one whole year's rent in silver and gold, or the full value thereof, in such commodities, as we or our heirs, or such officer or officers appointed by us or our heirs from time to time to collect and receive the same, shall accept in discharge thereof, at the choice of us and our heirs, or such officer or officers aforesaid. Provided, that if the said sum for a fine or alienation shall not be paid unto us or our heirs, or such officer or officers as aforesaid, and such alienation entered upon the record either in the provincial court, or in the county court where the said parcel of land lyeth, within one month next after such alienation, the said alienation shall be void and of none effect.

Given at our city of St. Mary's, under the great seal of our said province of Maryland, the seven and twentieth day of September, in the fifth year of our dominion, &c., anno Domini one thousand six hundred and eighty. Witness ourself.

I hereby certify, that the aforegoing is truly copied from liber C. B., No. 2, folios 56 and 57, one of the land record books [SEAL.] of this office. Witness my hand and the seal of the land office of Maryland, this 27th day of November, 1852.

J. MURRAY,
Com. of the Land Office.

Patent for Content.

Edward Birch, patent No. 14, as "Content." Frederick, &c.

Know ye, that whereas Edward Birch, of Prince George's county, by his humble petition to our agents for management of land affairs within this province, did set forth that there was about the quantity of fifteen acres of vacant land lying and being in the county aforesaid, joining a tract of land belonging to the petitioner, called Dickinson's Park, partly cultivated, by means whereof the petitioner conceived the same could not be taken up by a common warrant, therefore honorably prayed a special warrant to effect and secure it; and that on return of a certificate of survey thereof, he, complying with all other requisites, might have our grant issue unto him thereon, which is granted him, and accordingly a warrant, on the twenty-sixth day of February, seventeen hundred and fifty, unto him for that purpose did issue. In pursuance whereof it is certified unto our land office that there is surveyed and laid out for and in the name of him, the said Edward Birch, no more than the quantity of fourteen acres of vacant land, for which rights were made good at the time of granting the said warrant; and he has paid and satisfied unto Benjamin Tucker, esq., our present agent and receiver

general, for our use, the sum of one shilling sterling for the improvements mentioned to be made on the said land, according to Charles, lord baron of Baltimore, our great grandfather, of noble memory, his instructions to Charles Carroll, esq., his then agent, bearing date at London, the twelfth day of September, seventeen hundred and twelve, and registered in our secretary's office of our said province, together with a paragraph of our instructions bearing date at London, the fifteenth day of December, seventeen hundred and thirty-eight, and registered in our land office. We do therefore hereby grant, unto him, the said Edward Birch, all that tract of land called "Content," beginning at the end of the fourth line of a tract of land called Hudson and Birch's race, being the north by west sixty-eight perches line of said land, and running thence north seventy-nine degrees east, eight perches; north by west, twenty-two perches; north fifty-seven degrees west, fourteen perches; south twelve degrees west, forty-two perches; southwest, fifty-six perches; north sixty-seven degrees west, forty-eight perches; south, seventy-seven perches; north seventeen degrees east, forty-nine perches; east by north thirty-nine perches; then with a straight line to the beginning, containing and now laid out for fourteen acres of land, more or less, according to the certificate of survey thereof taken out and returned into our land office, bearing date the seventeenth day of June, seventeen hundred and fifty-one, and there remaining, together with all rights, profits, benefits, and privileges thereunto belonging—royal mines excepted; to have and to hold the same unto him, the said Edward Birch, his heirs and assigns forever, to be holden of us and our heirs, as of our manor of Calverton in a free and common soccage, by fealty only for all manner of services, yielding and paying therefor yearly, unto us and our heirs, at our receipt, at our city of St. Mary's at the two most usual feasts of the year—viz: the feast of the Annunciation of the blessed Virgin Mary and Saint Michael the archangel, by even and equal portions, the rent of seven-pence sterling in silver or gold, and for a fine upon every alienation of the said land, or any part or parcel thereof, one whole year's rent, in silver or gold, or the full value thereof, in such commodities as we and our heirs, or such officer or officers as shall be appointed by us and our heirs, from time to time, to collect and receive the same, accept in discharge thereof, at the choice of us and our heirs, or such officer or officers aforesaid: Provided, that if the said sum for a fine or alienation shall not be paid unto us and our heirs, or such officer or officers aforesaid before such alienation, and the said alienation entered upon record, either in the provincial court, or our county court, where the same parcel of land lyeth, within one month next after such alienation, then the said alienation shall be void and of no effect. Given under our great seal of our said province of Maryland this tenth day of August, anno Domini seventeen hundred and fifty-three. Witness our trusty and well-beloved Horatio Sharpe, esq.,

lieutenant general and chief governor of our said province of Maryland, chancellor and keeper of the great seal thereof.

HORATIO SHARPE.

LAND OFFICE OF MARYLAND.

I hereby certify, that the foregoing is truly copied from liber Y. S., No. 8, folios 341, 342, 343, one of the land record books of this office.

Witness my hand and the seal of the land office of Maryland [SEAL] this 27th day of November, 1852.

J. MURRAY,
Commissioner of the Land office.

And also the following deed from Walter B. Brooke and others to Michael B. Carroll:

[Herein before inserted and made part of the verdict in this case.]

And then read the following depositions of George W. Biscoe and John B. Brooke, which were read from the record in another case in this court, by consent and by agreement, and to have the like effect as evidence as if the said named persons had appeared and had been examined in this cause without objection, and had deposed orally as is stated in the said depositions.

Evidence of George W. Biscoe.

That he knew the late Michael B. Carroll, of Prince George's county, in the State of Maryland, and that he departed this life on the 30th day of August, 1851; and that he died without children or descendants of children, and that he left the defendant, Jane M. Carroll, his widow, and left the following persons his next of kin and heirs at law—that is to say, Araminta Brooke, the wife of John B. Brooke, of Prince George's county aforesaid, his only sister; that he had a brother named Charles Carroll, who died in the lifetime of the said Michael B. Carroll, leaving the following named children his representatives and heirs at law, to wit, America, the wife of John M. Martin; Mary, the wife of John Ford; Robert D. Carroll and Charles W. Carroll; and the said Michael B. Carroll left, at the time of his death, the two following named persons, his only surviving brothers—that is to say, George W. Carroll, and De Roza Carroll.

That he knows that said Michael B. Carroll in his lifetime purchased from Walter B. Brooke a farm known as Black Walnut Thicket, and Content, lying in Prince George's county aforesaid, but he is unable to say at what precise date the said purchase was made. The said witness further proved that he knows that said Walter B. Brooke was in possession of said farm from the time of

the decease of his mother, and that she died from ten to fifteen years since; that he knows nothing of any antecedent possession of said farm.

Evidence of John B. Brooke.

That he knew Walter B. Brooke, and he thinks he was in full possession of a farm usually called Black Walnut Thicket and Content, which he sold to Michael B. Carroll, and that he was in possession thereof as long back as twenty years; that said farm formerly belonged to Doctor Oswald Brooke, the father of the said Walter B. Brooke, and after the death of Doctor Oswald Brooke it was occupied by Mrs. Brooke, the widow of said Doctor Oswald Brooke, and by said Walter B. Brooke, until the said Walter B. Brooke acquired full possession; and that the possession of said Doctor Oswald Brooke was uninterrupted during his lifetime, from 1809 till his death; and that the possession of said Walter B. Brooke and those under whom he claimed had been continuous from the year 1809 to the day he sold to Michael B. Carroll as above stated. That said Michael B. Carroll died in possession of said land so as aforesaid, sold to him by said Walter B. Brooke, and that he so occupied the same uninterruptedly from the time it was sold, cultivating the same as his own, and that the said defendant, his wife, has been in possession of the same ever since his death.

And the plaintiff then proved further, that the said Araminta Brooke is the lessor of the plaintiff, and that her husband, John B. Brooke, departed this life before the day of the demise laid in the declaration in this action, and here rested his case.

And thereupon the defendants, to maintain the issue on their part joined, read in evidence to the jury the following copy of the last will and testament of the said Michael B. Carroll, and the probate thereof:

Michael B. Carroll's will.

The last will and testament of Michael B. Carroll, of Prince George's county, in the State of Maryland.

I, Michael B. Carroll, being at this time in a weak state of bodily health, but of sound and disposing mind, memory, and understanding, do make and publish this, my last will and testament, in manner following, that is to say:

First, and principally, I commit my soul into the hands of Almighty God, and my body to the earth, to be decently buried at the discretion of my executrix hereinafter named; and after the payment of my just debts and funeral expenses, I give, devise, and bequeath as follows:

Item. To my dear wife, Jane, I give and bequeath all my slaves, and do request that none of them may be sold or disposed of for

the payment of my debts, but that provision shall be made for discharging the same out of the other personal property and effects which I shall leave at the time of my death.

Item. I give and bequeath to my said wife all the moneys that may be due to me on account of the co-partnership business heretofore conducted between Thomas Holland and myself, and also the moneys that may be due to me individually, on account of the mercantile subsequently conducted by myself, and also the amount that the said Thomas Holland may owe me for board.

Item. To my three nephews, Wm. Pinkney Brooke, George C. Brooke, and John B. Brooke, I give and bequeath one black colt each, and to each of my said nephews also a pecuniary legacy of five hundred dollars a piece.

Item. I do direct my executrix hereinafter named to pay to my in law, John B. Brooke, the amount of moneys which I borrowed from my late sister, Sophia H. Carroll, with interest, and any moneys it may appear that I may owe him individually.

Item. All the rest and residue of my property, both real, personal, and mixed, I give, devise, and bequeath to my said wife, Jane, who I do hereby constitute and appoint sole executrix of this my last will and testament, enjoining it upon her nevertheless to consult and advise with the said John B. Brooke, as occasion may require, respecting the settlement of estate, and make him a reasonable compensation for the same out of the funds hereinbefore bequeathed to her; and I do hereby revoke and annul all former wills by me heretofore made, declaring this and none other to be my last will and testament.

In testimony whereof, I have hereunto set my hand and seal, this 10th day of September, anno Domini 1837.

his
MICHAEL B. ⋈ CARROLL, [SEAL.]
mark.

Signed, sealed, published, and declared by Michael B. Carroll, as and for his last will and testament, in presence of us, who, in in his presence and at his request, and in the presence of each other, have subscribed our names as witnesses hereto.

TURNER WOLTON,
HENRY BROOKE,
WM. A. QUINN.

PRINCE GEORGE'S COUNTY, *set:*

September 12th, 1851. Then came William A. Quinn, one of the witnesses to the within will, and made oath on Holy Evangely of Almighty God, that he did see Michael B. Carroll, the testator herein named, sign and seal this will, and hear him publish, pronounce, and declare the same to be his last will and testament, and

that, at the time of his so doing, he was, to the best of his apprehension, of sound and disposing mind, memory, and understanding, and that he, together with Turner Wolton and Henry Brooke, the other two subscribing witnesses, respectively subscribed their names to this will in the presence of the testator, at his request, and in presence of each other.

Sworn before—

JAMES HARPER,
Register of Wills for P. G. county.

I hereby certify, that the within and foregoing is a true copy of the last will and testament of Michael B. Carroll, late of Prince George's county, deceased, from the record now remaining in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the orphans' court, this 24th day of November, 1852.

WM. A. JARBOE,
Register of Wills for P. G. county.

Whereupon the plaintiffs prayed the court to instruct the jury.

Plaintiff's prayer.

That if the jury find that the plaintiff and those under whom he claims have possessed and held the land called Black Walnut Thicket and Content, described in the deed from Walter B. Brooke and others to Michael B. Carroll, dated 29th January, 1842, and that the said Michael B. Carroll died seized thereof on the 30th August, 1851, and that the lessor of the plaintiff is one of his heirs at law, and that the said land is the same land, or part of the same land, mentioned in the patents for Black Walnut Thicket, and Content, offered in evidence by the plaintiff, then the said plaintiff is entitled to recover one undivided fourth part of the land mentioned in the said deed, and that the same did not pass to the said Jane M. Carroll, the devisee named in the last will of the said Michael B. Carroll, deceased.

The defendants objected to the granting of said prayer, and objecting further, that the lessor of the plaintiff, at the date of this demise, stated in the declaration, was a citizen of the State of Virginia. The said plaintiff proved by William Pinkney Brooke, that he is a son of the lessor of the plaintiff, and that the said lessor is at this time a citizen of the State of Virginia, and that she formerly was a citizen of the State of Maryland, and that she removed from Maryland into Virginia in the month of February or March, 1854, but he could not say exactly when. And on cross-examination, the said witness further proved that his uncle, George W. Carroll, and De Roza Carroll were in Maryland in the months of March and April, 1854, and left for the south in April, and that, at the time of their departure from Maryland, his mother resided in the

State of Virginia; that he knows his said uncle, George, in the month of March, 1854, paid a large sum of money to Thomas S. Alexander, but he cannot recollect at what time in March the payment was made, and does not recollect whether or not at that time his said mother had removed into the State of Virginia; and the defendants thereupon proved that the said sum of money before mentioned was paid to the said Alexander on the sixth day of March, 1854.

And the said defendants then prayed the court to instruct the jury.

Defendant's prayers.

1. That if the jury shall find from the evidence that Araminta Brooke, the lessor of the plaintiff, was, at the time of the death of the said Michael B. Carroll, the wife of John B. Brooke, and that the said John B. Brooke and Araminta Brooke, his wife, then resided in Prince George's county, and State of Maryland, and so continued to reside during the lifetime of the said John B. Brooke, and that the said John B. Brooke departed this life in the month of September, 1853, leaving the said Araminta Brooke surviving him, and that the said Araminta Brooke continued to reside in Prince George's county aforesaid, until she removed into the State of Virginia, as stated in the evidence of the witness, William Pinkney Brooke, then the plaintiff is not entitled to recover in this action.

2. If the jury shall find the facts set forth in the first prayer, and shall further find that the removal of the said Araminta Brooke into the State of Virginia took place after the first day of March, 1854, *that* the plaintiff is not entitled to recover in this action.

3. If the jury shall find the facts set forth in the preceding prayers, and shall further find that the said Araminta Brooke so removed into the State of Virginia for the purpose of instituting this action in this court, then the plaintiff is not entitled to recover in this action.

4. That in order to entitle the plaintiff to a verdict against the defendants, or either of them, it is necessary that he should prove to the satisfaction of the jury that the said defendants, or the defendant against whom the verdict is claimed, were, or was at the time of the commencement of this suit, in possession of the premises whereof a recovery is sought; and that the plaintiff, having offered no evidence of such possession of the defendants or either of them in the said premises, or any part thereof, their verdict ought to be for the defendants.

And the plaintiff thereupon further proved by the said William Pinkney Brooke, that the defendant, Henry Worthington, was in receipt of the rents of the tracts called Black Walnut Thicket and Content, and that he received rents therefor for the year 1854; and being then cross-examined by the said defendant, the said witness

proved that one Wall was in possession of part of the said tracts, as tenant of the said defendant for the year 1854, and paid rent to the said defendant therefor, and that one Grymes had possession of the dwelling-house and lands adjacent, as tenant for the said year, and that during the said year all other parts of said land which could be worked were in possession of other tenants. And the said plaintiff also read in evidence the following rules of this court:

Rule 69.

All declarations in ejectment shall be served twenty days before the day of return, exclusive of the day of service and the day of return; and when so served, the plaintiff may take judgment by default against the casual ejector, if no appearance for tenant in possession of his landlord during the term.

Rule 70.

No person shall be admitted as defendant in ejectment but on condition that on his appearance he shall not confess lease, entry, and ouster, stated in the declaration; and such confession shall be entered on the docket.

Rule 71.

Every defendant in ejectment, on confessing lease, entry, and ouster, shall plea non cul, and make up the issue, and shall, during the term, take a general defence, unless further time to ascertain defence be allowed by the court; and warrant for resurvey shall issue in no case when general defence is taken without the special order of the court, on motion of the plaintiff or defendant; and being fully satisfied that a survey is absolutely necessary for the trial of the title to the land in question, or the defendant, on satisfying the court that a survey is really necessary for the information of the court and jury respecting the location of the land, may obtain a warrant of survey.

Rule 72.

Every warrant of survey shall direct that a survey be made of the land for which the ejectment is brought according to the metes and bounds as expressed in the original certificates thereof, and if any variance between the certificate and grant, according to both, and also of any other land adjacent thereto that may be necessary for the illustration of the matter in dispute between the parties, according to their several claims and pretensions, and according to directions from the parties, or their attorneys or counsel, in writing, and that five fair certificates and plats of such survey and illustra-

tion be returned, with full explanations thereof, accurately distinguishing the several claims and pretensions of the plaintiff and defendant, and every other thing directed by either to be noted on the plat for illustration, and certifying whether the plaintiff or defendant admitted or denied the location, or any boundary line, or possession laid down by his adversary, for pretensions or illustration, or any other matter or thing laid down for illustration, and noting the place or spot at which any deposition shall be taken. Such warrant of survey may issue to such person as the parties may nominate, and, if they do agree, to such person as the court may appoint, who shall, before he acts, voluntarily make oath or affirmation that he will make such survey according to the best of his skill, and without partiality or prejudice; and such survey shall be made in the presence of the marshal or his deputy, and the return thereof shall be signed by the person making the same and by the marshal.

And thereupon the court refused to grant the first, second, and third instructions, as above prayed for by the said defendants.

1. Because there is no plea in abatement denying the residence of the lessor of the plaintiff in Virginia at the time this suit was brought.

2. If the evidence was admissible, the removal at the time and for the reason hypothetically stated in the prayer would be no bar to the action.

3. If the title of the plaintiff accrued before the date of the demise, it is immaterial whether her removal to Virginia was before or after the date of the demise.

And the said court also refused the fourth prayer of the said defendants, so far as Black Walnut Thicket and Content are concerned, and as respects the defendant, Worthington, because the return shows that he was tenant in possession of the land when the process was served on him, and as such has appeared as defendant to this suit, and confessed lease, entry, and ouster of the premises, but gave the direction as to Warren, the other defendant, and as far as other lands mentioned in the declaration are concerned.

And the court further instructed the jury as prayed for by the plaintiff.

To which said refusals of the court to instruct the jury as prayed for by the defendants, and each and every of them, and to the instruction so as aforesaid given to the jury on the prayer of the plaintiff, the said defendants pray leave to except, and that the court would sign and seal this their bill of exceptions, which is done accordingly this 13th day of April, 1855.

R. B. TANEY, [SEAL.]
WILLIAM F. GILES, [SEAL.]

And now here, to wit, on the thirteenth day of April, in the year of our Lord one thousand eight hundred and fifty-five, the said

Henry Worthington and John Henry Warren produced to the said circuit court here the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, which said writ of error is in the words and of the tenor following, to wit:

* * * * * * * * *
* * * * * * * * *

THE UNITED STATES OF AMERICA.

The President of the United States to the judges of the circuit court of the United States for the fourth circuit in and for the Maryland district, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between the lessee of Araminta Brooke, plaintiff, and Henry Worthington and John Henry Warren, defendants, a manifest error hath happened, to the great damage of the said Henry Worthington and John Henry Warren, as by their complaint appears—we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first Monday in December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

[SEAL.]

Witness the Honorable R. B. Taney, Chief Justice of our Supreme Court of the United States, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-four.

Issued 13th April, 1855.

THO. SPICER,
Cl'k Circ't Ct.

In pursuance whereof, and according to the form of the act of *act of* Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, together with the said writ of error, is hereby transmitted to the said Supreme Court accordingly.

Writ of error bond.

Know all men by these presents, that we, Henry Worthington, John Henry Warren, and James B. Belt, of Prince George's county, are held and firmly bound unto the lessee of Araminta Brooke, a citizen of the State of Virginia, in the full and just sum of five hundred dollars lawful money of the United States, to be paid to the said lessee, his heirs, executors, administrators, or assigns, to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this fourteenth day of November, in the year of our Lord one thousand eight hundred and fifty-five.

Whereas, at a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-five, in an action of trespass and ejectment pending in the said circuit court, the said lessee of the said Araminta Brooke recovered his judgment against the said Henry Worthington and John Henry Warren for the land mentioned in the verdict of the jury—

And whereas the said Henry Worthington and John Henry Warren have sued out the writ of the United States of America for the correcting of errors, and a citation directed to the said lessee, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, to show cause, if any there be, why the judgment so as aforesaid rendered, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf: now the condition of the above obligation is such, that if the said Henry Worthington and John Henry Warren shall well and truly prosecute with effect their said writ of error, and pay unto the said lessee as aforesaid, his heirs, executors, administrators, or assigns, the damages, costs, and charges adjudged unto him in the said circuit court, and also all such damages, costs, and charges as may be awarded unto him by the said Supreme Court, in case they, the said Henry Worthington and John Henry Warren, shall fail to make good their said plea, then the above obligation to be void and of none effect; otherwise to be and remain in full force and virtue.

JNO. H. WARREN, [SEAL.]
HENRY H. WORTHINGTON, [SEAL.]
JAMES B. BELT, [SEAL.]

Signed, sealed, and delivered in presence of—

The surety to this bond is in my opinion sufficient.
TH. S. ALEXANDER.

Approved.

R. B. TANEY.

Nov. 24, 1855.

The United States of America, to Richard Roe, lessee of Araminta Brooke, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fourth circuit in and for the Maryland district, wherein Henry Worthington and John Henry Waring are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Henry Worthington and John Henry Waring, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand, this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and fifty-five.

R. B. TANEY.

Notice of the above citation acknowledged.

REVERDY JOHNSON.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, [SEAL.] I hereunto subscribe my name, and affix the seal of the said circuit court, this twenty-first day of December, in the year of our Lord one thousand eight hundred and fifty-five.

THO. SPICER,
Cl'k Circ't Ct.

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THE UNITED STATES OF AMERICA,
District of Maryland, to wit.

At a Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, begun and held at the city of Baltimore, on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-five—

Present, The Honorable R. B. Taney, Chief Justice of the Supreme Court of the United States; the Honorable William F. Giles, Judge of Maryland District; Wm. Meade Addison, Esquire, Attorney; John W. Watkins, Esq., Marshal; Thomas Spicer, Clerk—

Among other were the following proceedings, to wit:—

GURNSEY Y. ROOTS, ERASTUS P. COE,
vs.
JOHN MCCULLOUGH, CYRUS D. CULBERTSON.

Be it remembered that heretofore, to wit, on the eighth day of July, in the year of our Lord one thousand eight hundred and fifty-four, the said Gurnsey Roots and Erastus P. Coe, by George W. Dobbin and William A. Talbott, their attorneys, declared in the Circuit Court here against the said John McCullough and Culbertson, in a plea of trespass on the case, &c., in the words and of the tenor following, to wit:—

Declaration.

UNITED STATES OF AMERICA,
District of Maryland, sct.

John McCullough and Cyrus D. Culbertson, citizens of the State of Maryland, partners trading under the firm of McCullough and Culbertson, were attached to answer Guernsey Y. Roots and Erastus P. Coe, citizens of the State of Ohio, partners, trading under the firm of Roots and Coe, of a plea of trespass on the case, &c.

And thereupon the said plaintiffs, by Dobbin & Talbott, their attorneys, complain: that whereas, the said defendants on the first day of July, in the year of our Lord eighteen hundred and fifty-four, at Baltimore, to wit, at the district aforesaid, were indebted to the plaintiffs in the sum of seven thousand dollars, for goods, wares, and merchandise sold and delivered by the plaintiffs to the defendants, and at their request; and in a like sum of money, for money then and there lent by the plaintiffs to the defendants at their request; and in a like sum of money, for money by the plaintiffs paid for the defendants at their request; and in a like sum of money, for money then and there received by the defendants, for the use of the plaintiffs; and in a like sum of money, for money found to be

due from the defendants to the plaintiffs on an account then and there stated between them. And the defendants afterwards, on the day and year last aforesaid, at the district aforesaid, in consideration of the premises respectively in this court mentioned, then and there promised to pay the said several sums of money last above specified to the plaintiffs on request. Yet the defendants have disregarded their promises, and have not paid any of the said sums of money or any part thereof, to the damage of the plaintiffs twelve thousand dollars; and thereupon they bring suit, &c.

DOBBIN & TALBOTT,
Attorneys for Plaintiffs.

Which said declaration is thus endorsed, to wit:—

"MR. SPICER: Please docket this case, by consent, to November Term, 1854.

DOBBIN & TALBOTT,
for Plaintiffs.

WM. SCHLEY,
for Defend'ts."

And thereupon, at November Term of the said Circuit Court, to wit, on the first Monday of November, in the year of our Lord one thousand eight hundred and fifty-four, came into the Circuit Court here, the parties aforesaid by their attorneys aforesaid.

And thereupon the parties aforesaid, by their attorneys aforesaid, file in the Circuit Court here, an agreement in the words and of the tenor following, to wit:—

Agreement.

GURNSEY Y. ROOTS & ERASTUS P. COE
vs.
JOHN MCCULLOUGH, CYRUS D. CULBERTSON.

IN THE CIRCUIT COURT OF THE UNITED STATES,
in and for the Fourth Circuit and District of Maryland.

It is agreed that depositions taken before James Birney, Esquire, of Cincinnati, Ohio, on the part of the plaintiffs, and on the part of the defendants, or of either, shall be read in evidence on the trial of this cause, subject to all exceptions to the admissibility and effect of the testimony which may be offered on either side.

It is further agreed that such depositions may be taken, on interrogatories, to be filed before said commissioner at the time of the taking of said depositions, or without interrogatories, as the said parties respectively, or their respective counsel, who may be retained for that purpose, shall prefer. Notice to the counsel who may be retained in Cincinnati by the respective counsel shall be sufficient; and the statement of Mr. Birney that said notice has been given

shall be sufficient evidence thereof. The said parties will respectively employ counsel in Cincinnati, on or before the 1st December next, and notify Mr. Birney of the fact; and in case of default on either side, the other may proceed to take testimony without previous notice.

DOBBIN & TALBOTT,
for P'tiffs

WM. SCHLEY,
for Defend'ts.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the Court here thereon, is continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-five, came again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Rule Plea.

And thereupon, on motion of the said Gurnsey Y. Roots and Erastus P. Coe, by their attorneys aforesaid, it is ruled by the Court here that the said John McCullough and Cyrus D. Culbertson answer to the declaration aforesaid of the said Gurnsey Y. Roots and Erastus P. Coe, in the plea aforesaid, or judgment by the Court here will be entered against them in default thereof.

Plea.

And the said John McCullough and Cyrus D. Cubertson, by their attorney aforesaid, defend the force and injury when, &c., and say that they did not assume upon themselves in manner and form as the aforesaid Gurnsey Y. Roots and Erastus P. Coe above against them have complained, and of this they put themselves upon the country.

Issue.

And the said Gurnsey Y. Roots and Erastus P. Coe in like manner, &c.

Therefore, let a jury thereon appear before the Court here, on the first Monday of November next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c., the same day is given to the said parties, then and there, &c.

And now at this day, to wit, the first Monday of November, in the year of our Lord one thousand eight hundred and fifty-five, come again into the Circuit Court here the parties aforesaid, by their attorneys aforesaid.

Thereupon, for trying the issue aforesaid, it is ordered by the

Court here that twenty persons from the panel of petty jurors returned to the Court here by the Marshal of the Maryland District, be drawn by ballot; and thereupon, the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists; thereupon, the remaining twelve persons, being called, come, to wit:—

Jury.

George Gale, John C. Welsh, William S. Gittings, John Perdue, Edward Flayhart, Thomas Smith, William M. Keppler, Michael Byrne, N. B. Harding, Lebbeus Griffith, John B. Holmes, Gist T. Cockey.

Who, being empanelled and sworn to say the truth in the premises, upon their oath do say:—

Verdict.

That the said John McCullough and Cyrus D. Culbertson did assume upon themselves in manner and form as the said Gurnsey Y. Roots and Eras. P. Coe within against them have complained, and they assess the damages of the said Gurnsey Y. Roots and Erastus P. Coe, sustained by occasion of the non-performance of the premises and assumptions aforesaid, to the sum of six thousand seven hundred and forty-five dollars and seventy-nine cents, current money.

Judgment.

Therefore, it is considered by the Court here that the said Gurnsey Y. Roots and Erastus P. Coe recover against the said John McCullough and Cyrus D. Culbertson, as well the sum of six thousand seven hundred and forty-five dollars and seventy-nine cents, current money, their damages aforesaid, by the jurors aforesaid, in form aforesaid, to be sustained by occasion of the non-performance of the promises and assumptions aforesaid, as the sum of

by the Court hereunto them, the said Gurnsey Y. Roots and Erastus P. Coe, on their assent adjudged for their costs and charges by them about their suit in this behalf laid out and expended; and the said John McCullough and Cyrus D. Culbertson, in mercy, &c.

Memorandum.

Before the jurors aforesaid withdrew from the bar of the Court here, the said John McCullough and Cyrus D. Culbertson, by their attorney aforesaid, tendered to the Court here the following bill of exceptions, which was by the Court here signed and sealed, and which is in form following, to wit:—

Defendants' Exception.

ROOTS & COE
vs.
McCULLOUGH & CULBERTSON.

Action of Assumpsit, in the Circuit Court of the United States, in and for the District of Maryland.

At the trial of this cause, the plaintiffs, to maintain the issue on their part joined, proved by John H. Ayedelotte, a competent witness, that the plaintiffs are co-partners, as stated in the declaration, and citizens of the State of Ohio; that the defendants are also co-partners, as stated in the declaration, and citizens of Maryland, and both were so at the time this suit was brought; that witness was in the employment of plaintiffs, in the month of June, 1854, and in that month called on Mr. McCullough, who was then in Cincinnati, in reference to payment of the price of 212 tierces of hams purchased by him in Cincinnati.

The first time witness saw Mr. McCullough, witness told him that Mr. Roots wanted the money for the hams that day; and Mr. McCullough replied that it was all right, and he would settle on 'change. Witness understood by this that he would pay the money on 'change. That witness saw Mr. McCullough again on the same day, probably an hour or two after the first interview; the object of witness, in this second interview, was to present a bill to Mr. McCullough, which he did, and left it with him. (It was admitted by the defendants' counsel that notice to produce said bill had been duly given, but that it could not be found.) Witness testified that the following paper is a correct copy of the bill so presented, and is as follows:—

Exhibit D.

CINCINNATI, *June* 21, '54.

Messrs. McCullough & Culbertson, Bo't of Roots & Coe.

212 tierces S. C. hams, 5,339 ps. 67,071 @ 9¼,	$6,204 07
Drayage,	13 25
	$6,217 32

The above is the duplicate bill referred to in the deposition of J. H. Aydelotte on page 4, as marked "Exhibit *D.*"

$3,261 80

Mr. McCullough said he would settle it on change that day, and gave witness to understand that he had offered paper for discount in.

bank that day, from the proceeds of which he would settle the bill. These conversations both occurred in Cincinnati.

Cross-examination.

And the said witness on cross-examination stated, that he became a partner of the present firm of Roots & Coe, in August, 1854, but has no interest in the business of the former firm, nor in the result of this suit.

That the said 212 tierces of hams at the time of sale were in Henry Lewis's pork-house, in Cincinnati; that witness was not present at the sale, and does not know of his own knowledge by whom said sale was made; that he never heard defendants, or either of them, object to paying the plaintiffs, unless they received an order from Henry Lewis that the hams in said 212 tierces were in Henry Lewis's pork-house, under a warehouse receipt of Samuel Lewis, now shown him (which is the paper annexed to Henry Lewis's deposition marked exhibit *A*, and hereafter set out); and he understood that the hams in question were part of those mentioned in that paper; that witness thinks Samuel Lewis's former warehouse receipts have never been given up; witness has never heard a demand made for them. Witness was not acquainted with Mr. McCullough on the day he first called on him, and he was pointed out to witness by Mr. Townsend. This was in the pork-house of Henry Lewis. On the day witness, McCullough, Mr. Townsend did not go home with witness, and did not demand S. Lewis's receipts, so far as witness knows.

That witness was examined as a witness in this cause under a commission to Cincinnati, and would state here all that he stated there. That neither Henry Lewis nor Townsend said in his presence that an order on the defendants for the price of hams would not be given, unless Samuel Lewis's former warehouse receipts were given up. He is positive that Townsend did not go home with him to settle with plaintiffs.

The plaintiffs, further to sustain the issue on their part, read to the jury the following deposition taken by consent in the cause.

Deposition of Stanley Matthews, witness for Pl'ffs.

Stanley Matthews, of lawful age, being duly sworn, deposes and says:—

Some time last summer, in the month of June, according to my recollection, Mr. Roots came into my office, on Third Street, in this city, and introduced to me Mr. McCullough, of the firm of McCullough and Culbertson, of Baltimore, stating that some difference of opinion had arisen between them as to whom the purchase money for a lot of hams, bought by Mr. McCullough for his firm, should be paid by him, it being claimed by Messrs. Roots & Coe, and Mr. Henry Lewis having forbidden its payment to them, and that they had called upon me that Mr. McCullough might be satisfied as to what he ought

to do. I inquired of Mr. McCullough from whom he made the purchase. He said the hams were in Henry Lewis's pork-house, that his negotiations for the purchase of them had been made with Mr. Roots and Mr. Lewis jointly, but that at the time of the purchase he had understood from them both that the property belonged to Messrs. Roots & Coe, and he understood himself from their statements, as purchasing the hams from Messrs. Roots & Coe. I advised Mr. McCullough what I thought he ought to do under the circumstances, and they both left. On the same day, I think, an hour or two afterwards, I met Mr. McCullough on Main Street, near Fourth, in this city, and walked a short distance with him. I asked him what he had concluded to do with reference to paying Messrs. Roots & Coe for the hams previously referred to, when he said that he understood at the time he was buying them, that he was purchasing from Messrs. Roots & Coe, and had no doubt that they in fact belonged to them; but that Mr. Lewis had given him notice not to pay Roots & Coe, and that he knew Mr. Lewis was a litigious man, and a very troublesome one to have difficulty with, and he was determined, if he had to have a difficulty about it, not to have it with Mr. Lewis.

Cross-examined.

Cross-examined by Thomas M. Key, counsel for defendants.

Question. State whether, at the time of the conversation above mentioned, you were, and whether you still are the legal adviser of the plaintiffs, and now acting as such in the taking of this testimony; state whether you have given the whole of the conversations referred to, and whether you are clear in your recollection as to McCullough's saying that he "*that he unders* himself as purchasing the hams from Roots & Coe," and "whether was determined if he had to have a difficulty, not to have it with Henry Lewis."

Answer. At the time of the conversations above referred to, I was the legal adviser of the plaintiffs, and still am, and am now acting as such, in the taking of this testimony. I have given above, according to my best recollection, the substance of the whole conversations referred to, and am very clear in my recollection that Mr. McCullough said he understood himself as purchasing the hams from Roots and Coe, and that he was determined if he had to have a difficulty, not to have it with Henry Lewis.

STANLEY MATTHEWS.

The defendants proved by said witness, Aydelotte, that the advances made to said Henry Lewis were made by Adams & Buckingham, of New York, through the plaintiffs, as their agents. The plaintiffs further proved by said witness, that Adams & Buckingham were not residents of, or doing business in the State of Ohio, but in the city of New York. That the agreement between Adams and Buckingham and the plaintiffs was, that the plaintiffs were to be paid for their agency by a return commission, after sales were made up of

property advanced on. The commission on the sales of such property was two and a half per cent. on the amount it sold for. When the plaintiffs sold in Cincinnati, they retained one and a half per cent. of this commission, and credited Adams and Buckingham with the remaining one per cent. And when such property was sent to New York, and sold by Adams and Buckingham there, they retained one and a half per cent. of such commission, and credited the plaintiffs with the remaining one per cent.

Evidence of Whitman, for Deft's.

The defendants, to maintain the issue on their part, proved by Whitman, a competent witness, that he is now, and was in 1854, the clerk and bookkeeper of the defendants; that said Henry Lewis was at that time indebted to the defendants in about twenty-seven thousand dollars, for advances made by him on provisions to be forwarded; and that of this amount $19,000, part thereof, was secured by the responsibility of Samuel Lewis, on the basis of which security such advances, to the extent of $19,000, were made; that the whole debt of $27,000 is still due, except as to a credit for the price of the 212 tierces aforesaid, which Henry Lewis directed the defendants to credit in part payment of the liability to defendants of said Samuel Lewis. The defendants also proved by said witness, that 100 tierces, parcel of said 212 tierces, were received by defendants on or before the first day of July, 1854, and were sold on said last mentioned day, to parties in Philadelphia, on 4 months' credit, and that the note of the purchasers of the said 100 tierces was received on the 8th day of July, 1854, being a note dated 1 July, 1854, at 4 months. The defendants did not, so far as he knows, procure a discount of said note. The other 112 tierces were also sold in Philadelphia, at 4 months' credit, 50 tierces thereof were sold before, but not delivered until after the 1st day of July, 1854, and the other 62 tierces were not sold or delivered until after said 8th July, 1854; and that the note for said 50 tierces was not received by the defendants until after the said 8th of July, 1854.

The defendants also read in evidence the following depositions taken by consent.

Agreement.

ROOTS & COE,
vs.
MCCULLOUGH & CUBERTSON.

IN THE CIRCUIT COURT OF THE UNITED STATES
in and for the Fourth Circuit and District of Maryland.

It is agreed that depositions taken before James Birney, Esquire, of Cincinnati, Ohio, on the part of the plaintiffs, and on the part of the defendants, or of either, shall be read in evidence on the trial of

this cause, subject to all exceptions to the admissibility and effect of the testimony, which may be offered on either side. It is further agreed that such deposition may be taken, on interrogatories to be filed before said Commissioner, at the time of the taking of said depositions, or without interrogatories, as the said parties respectively, or their respective counsel, who may be retained for that purpose, shall prefer. Notice to the counsel who may be retained in Cincinnati by the respective counsel, shall be sufficient, and the statement of Mr. Birney that such notice has been given shall be sufficient evidence thereof. The said parties will respectively employ counsel in Cincinnati, on or before the 1st December next, and notify Mr. Birnie of the fact, and in case of default on either side, the other may proceed to take testimony without previous notice.

DOBBIN & TALBOTT,
for Plaintiffs.

WM. SCHLEY,
for Defend's.

Depositions of witnesses produced, sworn, and examined on the 30th day of January, 1855, before James Birney, a Commissioner in and for the State of Ohio, appointed by the Governor of the State of Maryland, to administer oaths, take depositions and acknowledgment of deeds, to be used as recorded within said State of Maryland, at his office, in the city of Cincinnati, by virtue of the annexed agreement, signed Dobbin & Talbott, for plaintiffs, and William Schley, for defendants, in a cause pending in the Circuit Court of the United States in and for the Fourth Circuit and District of Maryland, in which Roots and Coe are plaintiffs, and McCullough and Culbertson are defendants.

John H. Aydelotte, Witness for Plaintiffs.

John H. Aydelotte, of the city of Cincinnati, about twenty-eight years of age, being produced, sworn, and examined, on behalf of the plaintiff, deposes and says:—

1st interrogatory. State what you know, if anything, respecting a transaction between plaintiffs and defendants in regard to hams.

Answer. I was bookkeeper for Roots and Coe, the plaintiffs, from April, 1849, to August, 1854. On the 21st of June, 1854, at the request of Mr. Roots, I made out a bill in their name of plaintiffs against McCullough and Culbertson, defendants, for two hundred and twelve tierces of sugar-cured hams. These had been sold, as the entry on the books of Roots and Coe showed, to defendants. I took the bill, as made out, to the pork-house of Henry Lewis, in Cincinnati, and presented it for payment to Mr. McCullough, one of the defendants. He said he had not made arrangements yet for funds,

but would see Mr. Roots on 'change, and *and* settle with him there. I understood him to mean that he would pay the bill that day.

2d interrogatory. State to what hams you refer, by whom they were held, to whom did they belong, and where they were at that time.

Answer. The hams were part of four hundred and fifteen hogsheads of sugar-cured hams in pickle, for which Samuel Lewis had given his warehouse receipt, as being in the store of Henry Lewis, and subject to the order of Roots and Coe. The hams were the property of Adams and Buckingham, of New York; they became so by Roots and Coe having made advances on them as agents of Adams and Buckingham. At the time of the sale, they were in Henry Lewis's store or pork-house.

3d interrogatory. State for what purpose they had been deposited in the pork-house of Henry Lewis.

Answer. They were put there to be smoked, canvassed, yellow washed, and packed, as expressed in warehouse receipt of Samuel Lewis to Roots and Coe, and as per agreement of Henry Lewis, which warehouse receipt, signed by Samuel Lewis and marked Exhibit *A*, and hereto attached, and agreement of Henry Lewis, signed by him, marked Exhibit *B*, and hereto attached.

4th interrogatory. State whether any portion of the hams mentioned in Samuel Lewis's warehouse receipt had been delivered smoked prior to the above-mentioned sale to McCullough and Culbertson, and at what dates.

Answer. There were one hundred and eighty tierces smoked on the twenty-seventh day of May, 1854. Three hundred tierces on the nineteenth day of June, 1854, as indorsed upon the back of Samuel Lewis's warehouse receipt, as being part of the hams mentioned in the receipt.

5th interrogatory. State whether the bill now shown you is the one presented by you to Mr. McCullough, and if so, identify it, and attach to your deposition. State, also, whether Henry Lewis ever purchased the hams referred to in Exhibit *B*, heretofore referred to by you, from Messrs. Roots and Coe, or paid them for the same. State, also, whether the hams referred in Exhibit *A*, were delivered to Messrs. Roots and Coe within thirty days from the date of that document, and whether they were ready for delivery within that time. State whether, counting the hams sold and delivered to Messrs. McCullough and Culbertson, now in controversy, all the hams called for by the warehouse receipt marked Exhibit *A*, were ever delivered from the pork-house of Henry Lewis to Messrs. Roots and Coe.

Answer. It is duplicate of the one presented by me. It is marked Exhibit *D*, and hereto attached. Henry Lewis, never to my knowledge, purchased the hams referred to in said Exhibit *B*, nor paid anything for them. On the 5th of April, 1854, there were eighty-four and a half hogsheads delivered as indorsed on the warehouse receipt. They were not ready for delivery according to the terms of

the agreement. All the hams called for by the warehouse receipt, were not delivered from the pork-house of Henry Lewis to Messrs. Roots and Coe, even counting the hams now in controversy. (The defendants, by their counsel, object to all the statements made by the deponent otherwise than from his personal knowledge, and to the statement of what deponent understood Mr. McCullough to mean, as being incompetent.)

Cross-examined by Defendants' Counsel.

Question. State all the conversation of Mr. McCullough at the time you presented the bill for payment, as mentioned in your answer to the first interrogatory of the plaintiffs. State whether you have given in said answer the exact words used by him.

Answer. No other conversation passed between us, that I can recollect, beyond what I have stated. He said he would settle the bill on 'change. I cannot say whether these were the exact words.

Question. State whether you know of your own knowledge, and how you so know, that the hams in controversy were part of the 415 hogsheads mentioned in Samuel Lewis's receipt.

Answer. I cannot swear to the exact hams either in the hogsheads or tierces. I never saw them in either. I know they were, or at judge they were, the same, because I went up to Henry Lewis's pork-house to get the weights, and the bill was made out according to the weights given to me by Mr. Townsend, bookkeeper of H. Lewis. I think it was Mr. Townsend. This lot of 415 hogsheads was the only that Roots and Coe were selling from. They had sold previously from the same lot to McCullough and Culbertson.

JOHN H. AYDELOTT.

Deposition of Stanley Matthews for Pl'tffs.

Stanley Matthews, of lawful age, being duly sworn, deposes and says: Some time last summer, in the month of June, according to my recollection, Mr. Roots came into my office on Third Street in this city, and introduced to me Mr. McCullough, of the firm of McCullough and Culbertson, of Baltimore, stating that some difference of opinion had arisen between them, as to whom the purchase money for a lot of hams, bought by Mr. McCullough for his firm, should be paid by him, it being claimed by Messrs. Root and Coe, and Mr. Henry Lewis having forbidden its payment to them, and that they had called upon me, that Mr. McCullough might be satisfied as to what he ought to do. I inquired of Mr. McCullough from whom he made the purchase. He said the hams were in Henry Lewis's pork-house, that his negotiations for the purchase of them had been made with Mr. Root and Mr. Lewis jointly, but that at the time of the purchase he had understood from them both that the property belonged to Messrs. Roots and Coe, and he understood himself from their statements as purchasing the hams from Messrs. Roots and Coe. I

advised Mr. McCullough what I thought he ought to do under the circumstances, and they both left. On the same day, I think an hour or two afterwards, I met Mr. McCullough on Main Street near Fourth, in this city, and walked a short distance with him; I asked him what he had concluded to do with reference to paying Messrs. Roots and Coe for the hams, previously referred to; when he said that he understood at the time he was buying them, that he was purchasing from Messrs. Roots and Coe, and had no doubt that they in fact belonged to them, but Mr. Lewis had given him notice not to pay Roots and Coe, and that he knew Mr. Lewis was a litigious man, and a very troublesome one to have difficulty with, and he was determined if he had to have a difficulty about it, not to have it with Mr. Lewis.

Cross-examined.

Cross-examined by Thomas M. Key, counsel for the defendants.

Question. State whether at the time of the conversation above mentioned you were, and whether you still are the legal adviser of the plaintiffs, and now acting as such in the taking of this testimony; state whether you have given the whole of the conversations referred to; and whether you are clear in your recollection, as to Mr. McCullough saying "that he understood himself as purchasing the hams from Roots & Coe," and "that he was determined if he had to have a difficulty, not to have it with Henry Lewis."

Answer. At the time of the conversations above referred to, I was the legal adviser of the plantiffs and still am, and am now acting as such, in the taking of this testimony. I have given above according to my best recollection the substance of the whole conversations referred to, and am very clear in my recollection that Mr. McCullough said, he understood himself as purchasing the hams from Roots and Coe, and that he was determined if he had to have a difficulty, not to have it with Henry Lewis.

Deposition on the part of the Defendants.

Depositions on behalf of the defendants taken at the same time and place.

Nathaniel Prentiss, of the city of Cincinnati, aged about thirty years, being produced, sworn and examined on behalf of defendant says:—

1st question. State your residence and business, and all that you know relative to the ownership of 212 tierces of hams in controversy in this suit, and all that you know relative to the purchase of the same by the defendants.

Answer. I reside in Cincinnati, Ohio, and am in the pork business. Henry Lewis had in his warehouse last spring or summer a lot of hams that came from Indianapolis, Indiana; he sold to John McCullough, who was one of the firm of McCullough and Culbertson, of Baltimore, at different times, three hundred an ninety-two tierces

(392) of the said hams. John McCullough purchased the hams of Henry Lewis at 9¼ cents per pound, I think. I shipped the hams myself to Henry Lewis from Indianapolis; I was employed by him to do so. These hams with other property were advanced on by Roots & Coe of Cincinnati as agents of Adams & Buckingham, of New York. The hams were shipped by myself to Cincinnati, and were taken to the warehouse of Henry Lewis, there smoked and prepared for market by Henry Lewis.

2d question. State in whose name the hams were bought and packed at Indianapolis.

Answer. In the name of David Macey and Co., of which firm Henry Lewis was a partner at that time.

3d question. State whose property the hams were at Indianapolis, and what change of ownership, if any, was made prior to the sale to the defendants.

Answer. The hams at Indianapolis were the property of David Macey & Co.; no change of ownership was made prior to the sale to defendants, that I know of.

4th question. State anything you may know as to the warehouse receipt given by Samuel Lewis, and heretofore annexed to the depositions now being taken.

Answer. I know that Samuel Lewis gave Roots and Co. a warehouse receipt for 415 hogsheads of hams. The receipt was for the same hams spoken of as shipped from Indianapolis.

5th question. State anything you may know as to any tender of said hams made on behalf of Samuel Lewis to Roots and Co.

Answer. I don't know that I know of any.

6th question. State in whose possession, and under whose control the hams in controversy were, at the time when they were sold to the defendants.

Answer. They were in the possession and under the control of Henry Lewis, they being in his own warehouse.

7th question. State whether the 415 hhds., excepting the 392 tierces sold to the defendants were also sold; and if so, by whom were they sold, and the proceeds collected? and were they sold to one or more parties?

(Question objected to by pl'ffs' counsel as leading.) J. B., *Com'r.*

Answer. I think 300 tierces were shipped by Mr. Lewis to Adams & Buckingham, of New York; some 1000 hams were sold by Mr. Lewis to Albert Lewis, I think, and a few of them I sold myself to Mr. Ewing, paid the money over to Mr. Lewis, and a part of them, I think some 80 and odd hogsheads, were shipped by Mr. H. Lewis to some one else, to whom I cannot recollect; that made up the 415 hhds., with the 392 tierces, spoken of before. I don't know who collected the proceeds of the 300 shipped to Adams & Buckingham.

8th question. State by whom the previous sale of 180 tierces was made to the defendants, and who received the proceeds of said sale.

Answer. The sale was made by Henry Lewis. I am not certain

whether the proceeds were paid to Henry Lewis, or whether he directed Mr. McCullough to pay over to Messrs. Roots and Co., one or the other received it; one bill was paid to Henry Lewis, I am certain. The 180 tierces were sold in three parcels, thirty, seventy, and eighty tierces.

Cross-examined.

1st cross-question. Question by plaintiffs. Have you personal knowledge of the matters—all of them, as to which you have testified? If not, state specifically to what extent you have not—and to what extent, and as to what particulars you have testified from hearsay.

Answer. I think I have. My testimony was given from my own observation and knowledge of the transaction, having been in the employ of Henry Lewis, at the time the transactions took place. I testified to nothing from hearsay, to my knowledge.

2d cross-question. You say the 392 tierces of hams sold defendants, were parcel of 415 hhds. hams shipped by you from Indianapolis, and advanced upon before shipment by Roots and Co.; to whom were those advances made, and in what way, or upon what vouchers?

Answer. Money was advanced, some of it, I think, to Henry Lewis. Some advances were made by bills on Adams & Buckingham, of New York, which were negotiated by David Macey, at Indianapolis, in the bank there. They were made at sundry times on warehouse receipts, given by David Macey & Co. to Roots & Co. If my memory serves me right, Mr. Macey was in the habit of enclosing his warehouse receipts to Mr. Lewis, and Mr. Lewis would take them down to Roots & Co. and get money or drafts and send up to Mr. Macey, and when Mr. Lewis wanted more money than he had warehouse receipts for of Mr. Macey, he would give Roots and Co., I think, his brother's warehouse receipts for property on his own house to raise money on.

3d cross-question. To whom were the remainder of those advances made, and at what time were the several advances made?

Answer. I considered the advances made to Henry Lewis. 'Twas during the fall and winter, subsequent to this sale to McCullough. I meant previous to the sale.

4th cross-question. Where are the warehouse receipts for those hams which were given by Macey & Co.? Were the moneys so advanced by Roots & Co. paid back to them, or Adams and Buckingham, before the shipment of the hams, as stated by you, to Cincinnati?

Answer. I cannot state where those receipts are. The moneys were not paid before the shipment from Indianapolis.

5th cross-question. When were these shipments of the 415 hhds. of hams made, and if at different times, in what amounts at the several times?

Answer. The 415 hhds. were shipped along in the months of

March and April, to the best of my recollection. I shipped them in different parcels, as I could get cars to bring them down. The length of time in which I was shipping them, and the precise quantities, I cannot state. I was there two or three weeks shipping, and sent them in parcels of from 14 to 30 hhds.

6th cross-question. Did you attend to the shipment of all these hams? Did you obtain the bills of lading in all cases? If so, what did you do with them?

Answer. The day I got there, I think Mr. Macey had put in the cars some forty or fifty hhds., and so informed me, and I went to the railroad office and got the receipt for them, the balance I shipped myself. I think I did obtain the bills of lading in all cases, and I believe I handed them to Mr. Macey. I was shipping other property at the same time, and whether I sent them to Mr. Lewis or not, I am not certain; my impression, however, is, that the bills of lading for the hams were given to Mr. Macey, and by him forwarded to Roots & Coe to satisfy his warehouse receipts given for the same, and I think the hams were consigned by Mr. Macey to Roots & Coe for that purpose.

7th cross-question. Was not all the property shipped to Cincinnati, and which was covered by the warehouse receipts you have spoken of, shipped in the same way and to the same parties? Do you not know that the shipments of the property covered by said receipts were all made upon the order of the plaintiffs to them?

Answer. I think not; I think Messrs. Roots and Coe had a warehouse receipts for some bulk sides, that were shipped to Henry Lewis. The balance, I think, were consigned to Roots & Coe to fill warehouse receipts. I do not know that the order was given by Messrs. Roots & Coe to ship them; my instructions were to ship enough to fill the warehouse receipts. These instructions were by Mr. Lewis himself, who employed me to go there and attend to it.

8th cross-question. What was the number of the bulk sides? How were they shipped? To whom was the bill of lading sent? Did you know when you shipped the sides that they were covered by a warehouse receipt from D. Macey & Co., and held by the plaintiffs?

Answer. I think eleven thousand pieces. They were shipped by railroad by Laurence to Madison, to Cincinnati. The bills of lading were sent to Henry Lewis. I understood there had been a warehouse receipt given for part of them, that it has been held by the plaintiffs for four hundred thousand pounds from D. Macey & Co.

9th cross-question. The above questions have reference only to the property covered by the warehouse receipts of Macey & Co., held by plaintiffs. Do you wish to change your last answer?

Answer. No, I think not.

10th cross-question. Who attended to shipment to Adams & Buckingham of the 300 tierces of hams? Were they shipped altogether or in parcels?

Answer. Mr. Townsend and myself, I think, and Mr. Lewis's

foreman. We sent them to the railroad. They were shipped in parcels at different times. I wish to be understood as speaking of the shipment to Adams and Buckingham, that the hams were partly shipped to New York, and probably some of them to their house in New Orleans.

11th cross-question. I want to know whether, as to either parcel, you attended to it, and got the bills of lading?

Answer. No, I think not; they gave to the dray-tickets to Mr. Root or his clerk.

12th cross-question. What did you mean by saying that Henry Lewis shipped the 300 tierces? How came you to give the dray tickets to plaintiffs?

Answer. I meant that they went from Henry Lewis's house, was his property, to be sold for his account to pay his debt to Adams and Buckingham. I gave the dray tickets to plaintiffs in order to have indorsed upon the back of the warehouse receipt given by Samuel Lewis for the hams, and the warehouse receipt has the indorsements.

13th cross-question. Don't you know that in all the bills of lading of 300 tierces, the plaintiffs were the shippers?

Answer. I never saw the bills of lading, but I should judge the plaintiffs were the shippers.

14th cross-question. Do you know, of your own knowledge, how Samuel Lewis came to execute warehouse receipts upon Henry Lewis's property?

Answer. I do not, of my own knowledge.

15th cross-question. Who was Samuel Lewis? what was his business?

Answer. Samuel Lewis was brother of Henry Lewis; he was a retired gentleman.

16th cross-question. Who forwarded bills of lading of 300 tierces to Adams & Buckingham?

Answer. I cannot say positively, but suppose Messrs. Roots & Coe did?

17th cross-question. Where and when were the sales made of the 180 tierces which you have said were sold by Henry Lewis to defendants?

Answer. The sales were made at Henry Lewis's office, I think in May last.

18th cross-question. Don't you know that the defendants paid the plaintiffs for these hams?

Answer. I think they did for two lots; one lot for thirty tierces they paid for to Henry Lewis. They were sold in three lots, thirty, seventy, and eighty tierces.

19th cross-question. Don't you know that the plaintiffs got the money for the thirty tierces, if not directly from defendants, then from Henry Lewis, or his clerk?

Answer. They did.

20th cross-question. In whose handwriting is paper marked Exhibit *A*? State as to first and major part of it, and also 2½ lines at the bottom of it.

Answer. All but the two lower lines, and a part of the third line, are in the handwriting of E. B. Townsend. The lower line, as above spoken of, as well as the signature, is in the handwriting of Samuel Lewis, dec. Mr. Townsend is the bookkeeper of Henry Lewis.

21st cross-question. Did you see that paper executed? Did you ever see the plaintiffs and Samuel Lewis together?

Answer. I think not. Not to my recollection have I ever seen plaintiffs and Samuel Lewis together.

22d cross-question. You will please state, if you have any personal knowledge on the subject, how Henry Lewis had the control of property under the warehouse receipt of Samuel Lewis?

Answer. I have no personal knowledge how he had control of it further than it was in his possession. Mr. Samuel Lewis never took any care of the property.

23d cross-question. Do you say that Samuel Lewis gave plaintiffs, or other parties, warehouse receipts of property in the warehouse of Henry Lewis, which property, after the delivery for the warehouse receipts, was the property of Henry Lewis?

Answer. I considered the property as Henry Lewis's. Samuel Lewis gave this warehouse receipt as a guarantee, as I understood it. Henry Lewis never lost his ownership in the final disposition of the property, as he never executed a bill of sale of the same, and the hams were to be sold eventually for his account. And I will state further that I am knowing to an agreement between Mr. Roots and Henry Lewis after this warehouse receipt was given, that Henry Lewis had a perfect right to dispose of the hams as he pleased, and account to Messrs. Roots & Coe at the rate of seven and a half cents per pound in pickle for 415 hhds. of hams, less so many hogsheads indorsed on the back of Samuel Lewis's warehouse receipt.

(The foregoing answer objected by plaintiffs' counsel as not responsive to the question, but upon objection being made, witness was allowed to proceed at request of defendant's counsel.)

JAS. BIRNEY, *Com.*

(And objected further, for the reason that it explains, and given for the purpose of changing the effect of papers marked Exhibits *A* and *B*.)

J. B., *Com.*

24th cross-question. Is the agreement you have referred to, that in paper marked Exhibit *B*?

Answer. The agreement that I spoke of was a conversation be-

tween Henry Lewis and G. Y. Roots, one of the plaintiffs, in my presence. I know nothing about paper marked Exhibit *B*.

25th cross-question. Where was that conversation held, and who else was present?

Answer. The conversation was held in Henry Lewis's pork-house, and I think Mr. E. B. Townsend was *was* present. I cannot be more definite as to the particular place in Henry Lewis's pork-house, but I am certain that it took place in H. Lewis's pork-house, in my presence, and also Mr. Roots afterwards referred to the same agreement to me.

(The latter part of the above answer, beginning with "and also," objected to by plaintiffs' counsel as not responsive to the question, but put down at request of defendants' counsel.)

J. B., *Com'r.*

26th cross-question. When was it that Mr. Roots did this? Who was then present?

Answer. It was at his office, when I went there to make a settlement of the accounts with him, or, in other words, to ascertain how much money was coming to them from Mr. Lewis. I think Mr. Coe was there, and Mr. Aydelott; one of the two was there, I am certain—I think both.

27th cross-question. In what state, as to cure, &c., were the 212 tierces of hams at the time they were sold to defendants?

Answer. They were cured, smoked, canvassed, washed, branded, packed in tierces, ready for shipment and sale in any market. They were what is called bacon hams, prepared in that way.

28th cross-question. Don't you know that a portion of the expense of this preparation for market was met by Roots & Coe, or Adams & Buckingham?

Answer. I am certain that Roots & Coe furnished the muslin and the paper and the twine, and possibly some of the tierces to be used in the preparation of the hams.

NATH'L PRENTISS.

Edmund B. Townsend, Witness for Defendants.

Edmund B. Townsend, aged about forty years, resident of Cincinnati, being produced, sworn, and examined on behalf of the defendants, deposes and says:—

1st question. State your residence and business, and all that you know relating to the ownership of 212 tierces of hams in controversy in this suit, and all that you know relative to the purchase of the same by defendants.

Answer. My residence is in Cincinnati, and has been since 1840. Am engaged as bookkeeper for Samuel Lewis at the present time, but was engaged in the same capacity for Henry Lewis from the 1st of October, 1853, to the 1st of October, 1854. About the 1st of

May, 1854, Mr. Henry Lewis sold to John McCullough, of the firm of McCullough & Culbertson, of Baltimore, thirty tierces of sugar-cured hams; also, on the 22d of May, seventy tierces of sugar-cured hams; and, on the 27th of the same month, eighty tierces of sugar-cured hams; the proceeds of which Mr. Lewis ordered Mr. McCullough to pay over to Messrs. Roots & Coe. On or about the 22d of June following, Lewis sold to the said John McCullough, in my presence, 212 tierces of hams, out of the same lot as the above one hundred and eighty tierces, at nine and one-quarter cents, packed in tierces, to enable the said Henry Lewis to raise money to make a final settlement with Roots & Coe, who are agents for Adams & Buckingham, New York, for advances made to the said Henry Lewis on the above hams. On the morning of the 24th of June, Mr. Aydelott came up to our office for the purpose of seeing Mr. McCullough, in order to collect the bill for the 212 tierces of hams. I introduced him to Mr. McCullough in front of office. I asked Mr. McCullough when he could pay *us* for the hams, as I wished to make a settlement with Roots & Coe. He said, will pay you on 'change, which meets about one o'clock. I told him I was going down to make a settlement with Messrs. Roots & Coe, and would give them an order on him for the amount of the bill. I met Mr. Roots on the corner of Third and Walnut Streets, and told him I wished to settle with them and take up Mr. Samuel Lewis's warehouse receipt, and give them an order on Mr. McCullough for the amount of their bill of hams; but he refused to return and go into a settlement. I then returned and notified Mr. McCullough not to pay any part of the bill to Roots & Coe. Mr. Henry Lewis, being confined to his room, took the above precaution to prevent Mr. McCullough from paying the bill until he had made a settlement with Roots & Coe, as Mr. Roots claimed to have made the sale himself, which was not the case. The above hams were the property of H. Lewis, Roots & Coe only having made an advance on them, and had a right to dispose of them in any way by paying over to Roots & Coe the proceeds, which he was ready to do on a final settlement, and surrender of Samuel Lewis's warehouse receipt.

2d question. State whether Mr. Aydelott was present at the conversation between you and Mr. McCullough detailed in the above answer, and what conversation, if any, then took place between Mr. Aydelott and Mr. McCullough.

Answer. Mr. Aydelott was present at the time of the conversation between Mr. McCullough and myself, which took place on the pavement in front of our office. Mr. Aydelott said he wished to get the amount of the bill. Mr. McCullough remarked that he was ready, and would pay on 'change when the order was presented—I mean the order for the amount of the bill, that I was to give Roots & Coe in case he made a settlement with them.

3d question. State where said hams were bought and packed originally, in whose name they were bought, whose property they

were when bought, and what change of ownership, if any, took place before the sale to defendants.

Answer. The hams were bought and packed in Indianapolis by David Macey & Coe for Henry Lewis, and no change of ownership had taken place to my knowledge, prior to the sale to the defendants.

4th question. State all the facts within your personal knowledge as to the giving of the warehouse receipt by Samuel Lewis, said receipt being annexed to these depositions and marked exhibit *A*.

Answer. The giving of the warehouse receipt of Samuel Lewis was arranged between Mr. Henry Lewis and Messrs. Roots & Coe for their security as against Adams and Buckingham. As for the conversations between the parties I know nothing, although I drew the receipt.

5th question. State for what purpose the former receipts referred to in the said exhibit *A* were given, and whether they have ever been surrendered by Roots & Coe?

Answer. The former warehouse receipts referred to in the one marked *A* were given for pork, lard, and sides and shoulders as security for advances made Henry Lewis by Roots & Coe for Adams & Buckingham, and have not been given up, though the parties have been notified in writing that we were willing and ready to comply with the requirement of the warehouse receipt of April 4, '54.

(The foregoing answer objected to by Pltffs' counsel.)

JAS. BIRNEY,
Com'r.

6th question. State whether the property mentioned in said former receipts was in store at any time to answer said receipts; if so, when was it stored?

Answer. The pork and lard were stored on lot on Sycamore between Fourth and Fifth Streets in part; the shoulders and sides were in the pork house of Henry Lewis on the corner of Sycamore and Canal, and would have been made to answer the receipts on their urging the delivery.

6th question. State what control, if any, Sam. Lewis exercised over the 415 hhds. of hams named in the receipt marked exhibit *A*?

Answer. He exercised none, only to have the hams smoked and delivered to Roots and Coe upon their delivering up his former warehouse receipt.

8th question. State what offer, if any, was made by Samuel Lewis to Roots & Coe to deliver to them the hams mentioned on said receipt? State what notice, if any, as to the delivery of said hams was given by said Lewis to Roots & Coe; and if there was any such notice in writing, attach a copy hereto.

(Objected to by pltffs' att'y.)

Answer. On the 20th day of May, 1854, I served on Messrs. Roots & Coe a written notice from Samuel Lewis, that he was ready

to deliver them, Roots & Coe, the hams in accordance with the provisions of his warehouse receipt of April 4, 1854, a copy of which is herewith attached, marked Exhibit *F*. Mr. Samuel Lewis being sick and confined to his room, and since died, requested me as his agent to see that the hams were delivered to Messrs. Roots & Coe, all of which was done, or the proceeds paid over to them, with the exception of the 212 tierces sold McCullough & Culbertson, and a few loose hams. He also notified them, dated May 3d, 1854, that he wished them to send up some person to see them weighed, and attend to the counting and receiving the same; Mr. Coe, of the firm of Roots & Coe, came up the following day, and asked Mr. Henry Lewis in my presence if the hams were ready for delivery. Mr. Henry Lewis replied, "They are, and I want you to send up some person to see them weighed and counted." He also asked Mr. Lewis if he had authority to sign the notice for Samuel Lewis; he said he was, and was his agent for the delivery of the hams.

(Above answer objected to, as far as it refers to contents of written notice and what was said by Samuel Lewis.)

9th question. State whether any notice in writing relating to said hams was given by Henry Lewis to Roots & Coe; and if any such was given, attach a copy hereto.

Answer. I as the agent of Henry Lewis gave Roots & Coe a written notice dated May 3d, 1854, a copy of which is herewith attached, that he wished them to send up some person to the weighing and counting the same, and marked Exhibit *G*.

10th question. State how you know exhibits *F* and *G* to be correct copies of the original notices.

Answer. They are copied from an impression made in our letter book at the time of delivery, which impressions were taken by myself as well as the copies herewith attached.

11th question. State what authority or control, if any, was exercised by Samuel Lewis over said hams after the giving of the notices above mentioned; state what connection, if any, Samuel Lewis had with said hams after the giving of said notices.

(Question objected to as leading, by pl'tiffs' att'y.

Answer. Samuel Lewis exercised no authority or control over the hams after the notices were given, except so far as to have his former warehouse receipt given up upon the delivery of the hams to Roots and Coe.

12th question. State whether said warehouse receipts, or any of them, ever were given up by Roots & Coe.

Answer. They were not, to my knowledge.

13th question. State what arrangement, if any, was made between Henry Lewis and Roots & Coe, as to said hams after the giving of said notices.

(Objected to.)

Answer. Messrs. Roots and Coe contracted with Henry Lewis after the delivery of said notices, to canvass, yellow wash, brand and

pack in tierces, the hams ready for market, for which they were to pay said Lewis his bill of charges for doing the same, as a further advance on them.

14th question. State anything you may know as to the disposition of the 415 hhds. of hams, excepting the 392 tierces sold *sold* to defendants.

Answer. Eighty-four and a half hhds. were paid for by H. Lewis, and indorsed on Sam'l Lewis's warehouse receipt. tierces were shipped to Messrs. Adams & Buckingham, New York; hams sold to A. Lewis, the proceeds of which, together with one hundred and eighty tierces included in the above 392, were paid over to Messrs. Roots & Coe, or would have been paid if they had gone into a settlement, and delivered up S. Lewis's warehouse receipt.

15th question. State in whose possession and control the said hams were from the time of the giving of the said notices.

Answer. In the possession of Henry Lewis, and under his control.

16th question. State to whom said hams belonged from their original purchase and packing until they were sold to the defendants.

Answer. Henry Lewis.

Cross-examined by Pl'ffs.

1st cross-question. Where was the sale of the 212 tierces made? State as nearly as you can the precise place.

Answer. In the office of Henry Lewis, near the second window from the southwest corner of the pork-house.

2d cross-question. At the time and place of sale, did not Mr. Henry Lewis ask Mr. Roots, in the presence of Mr. McCullough, if he or the plaintiffs would not sell the hams at 9 cents, and did not Mr. Roots say to Mr. McCullough that he would sell them to him at 9¼ cents; was not this in substance said?

Answer. I have no knowledge of any such conversation, or any such proposition from H. Lewis.

3d cross-question. Have you meant to be understood that Mr. Roots was not present?

Answer. Mr. Roots was present at the sale that was made by H. Lewis.

4th cross-question. Why did you not mention that in answer to the interrogatories in chief?

Answer. Because I did not think it essential, tho' had no objection to do it.

5th cross-question. What was you doing at the time? How long were the parties, Henry Lewis, McCullough and Roots, together at that time?

Answer. I was at my desk writing at the time, do not know the precise time they were engaged in conversation, but it was over a half hour an hour, tho' in this matter cannot state particularly the time.

6th cross-question. Did you hear and attend to all the conversations that passed?

Answer. I heard the conversation that passed, tho' I did not come up in the midst of the company and pay particular attention to every word, but there was nothing to prevent me from hearing all that was said.

7th cross-question. My question is, whether you heard *all* that was said? Please answer.

Answer. I heard all the conversation at that time relative to the sale of the hams.

8th cross-question. What other conversation was there? Please state it. I mean other than that relative to the sale of hams.

Answer. Cannot now recollect what topic was introduced, other than the sale of the hams, as Mr. Roots did not remain long in the office.

9th cross-question. But you have already said, Lewis, McCullough, and Roots was not over a half hour in conversation. Do you now modify that answer? Can you say there was any conversation other than that relative to the sale of the hams?

Answer. I cannot say particularly that there was any other conversation, neither do I modify my answer as regards the time; it may have been longer; cannot say positively to a minute, the time they were together.

10th cross-question. Had Mr. Roots any business at the office, other than the sale of the hams? if any, what was it?

Answer. Do not know that he had, neither do I know that he came for the purpose of selling the hams. He came up almost every day during the time the hams were being canvassed and yellow washed, for the purpose of seeing how we were getting along with the work, I presume.

11th cross-question. While writing at the desk of your employer do you generally hear and attend to conversations between him and others, on business, and even where the conversations are of a half hour's length?

Answer. I could hear a conversation between Mr. Lewis and Mr. McCullough at most any time, while employed in writing at my desk, and so might any person, unless he was very hard of hearing.

12th cross-question. My inquiry is as to conversations between Lewis and others. Please answer.

Answer. Cannot answer more explicit, as any person conversing with Mr. Lewis can be heard very distinctly by a third person, unless that person is very inattentive.

13th cross-question. Have you not heard the defendants or one of them say that they bought the 212 tierces of the plaintiffs, or something of about that import?

Answer. I have not.

14th cross-question. Was you aware, before testifying, of the

written contract of H. Lewis, of April 4, 1854, and hereto attached, marked exhibit *B*? if so, when did you first know of it?

Answer. I first knew of it the day of its date, or about that time.

15th cross-question. Do you not know that Henry Lewis was unable to do the things agreed to be done by him in that agreement, and that he called upon and received aid from the plaintiffs for that purpose?

Answer. I do.

16th cross-question. Do you not know those things were not done on the 2d of May, 1854, when say the notice marked exhibit *F* was given, that a large number of the 415 hhds. hams were not then canvassed, washed, branded and packed?

Answer. I do.

17th cross-question. Were you in the habit of giving notice to those who purchased meat of you, I mean of the house of Henry Lewis, not to pay for it to others?

Answer. I was not, unless there was a reason for it.

18th cross-question. Had McCullough told you that he should pay the plaintiffs?

Answer. Mr. McCullough told me that he was ready to pay for the hams when it was decided who he was to pay it to.

(The above objected to as not responsive to the question.)

19th cross-question. If no further answer is to be given to the question first above, let me ask if defendants ever paid Henry Lewis for the 212 tierces?

Answer. They have not to my knowledge.

20th cross-question. Has Henry Lewis ever brought suit against the defendants in this suit to enforce the payment?

Answer. He has not.

21st cross-question. Did not Aydelott present the bill for these hams to McCullough on the morning of the 24th of June?

Answer. Not in my presence.

22d cross-question. How do you know he was there to collect the bill?

Answer. He told me so.

23d cross-question. What did he say to McCullough, or in his presence?

Answer. He said he came up to collect the bill for the hams, or words to that effect.

24th cross-question. You knew then for this reason, as well as from what he told you, that he was there to collect the bill, did you not?

Answer. I only know what he came for from what he told me.

25th cross-question. When did McCullough tell you he was ready to pay for the hams, when it was decided who he was to pay to?

Answer. On the morning of the 24th of June.

25th cross-question. Did you express any surprise that Mr. Aydelott was there to collect the bill? if so, in what way?

Answer. I can't say that I did express any surprise at his calling for the bill, as Messrs. Roots & Coe generally collected the *the* proceeds of sales of these hams as soon as they were delivered.

27th cross-question. Why did you not give the notice to McCullough then?

Answer. I told him at that time not to give the money for the 212 tierces of hams until we had given Roots & Coe an order on him for the amount of the bill, as well as after I had returned from 3d street where I saw Mr. Roots, of the firm of Roots & Coe, who directed Mr. Aydelott to go and deliver Mr. McCullough a bill of the hams, and demand payment.

28th cross-question. Do you mean to say that you first told McCullough so in the presence of Aydelott? Did you tell him any such thing in his presence?

Answer. I told him in front of our door that I wrote Roots & Coe an order on him for the amount of the bill, and not to pay it without. Whether Mr. Aydelott was near enough to hear or not, cannot now say, but told Mr. Roots on the corner of Walnut and Third Streets, that he would not pay the bill without such an order, and also told Mr. Aydelott the same thing.

29th cross-question. In what part of the interview did you say that to McCullough?

Answer. Just as I was about leaving for Roots & Coe's office.

30th cross-question. Where was Aydelott with reference to the position of you and McCullough?

Answer. Cannot say, he might have been on my right or on my left, cannot exactly fix his position.

31st cross-question. Was there anything either said than what you have stated in answer to 28th question during that interview about your giving an order? if so, what?

Answer. I told Mr. McCullough that I was going down to Roots & Coe to make a settlement with them; and when that settlement was made would give them an order on him for the amount of the bill of hams.

32d cross-question. Was this said before or after the other? Was it said in the hearing of Mr. Aydelott?

Answer. I may have said it before, and did say it afterwards. It was said during the interview in front of our office, and Mr. Aydelott might have heard it, as I certainly had no intention of disguising anything in the matter.

33d cross-question. Do you not know that McCullough understood that he bought these hams of the plaintiffs? or do you mean to say, still, that Henry Lewis was the seller?

Answer. I have only Mr. McCullough's word that he bought the hams of Mr. Lewis, and still say that Henry Lewis sold the 212 tierces hams.

34th cross-question. Was not Henry Lewis indebted to the defendants at the time of the sale of the 212 tierces?

Answer. He was.

35th cross-question. When you met Mr. Roots on the corner of Third and Walnut, did you not require of him the Samuel Lewis receipt?

Answer. I requested a settlement and surrender of Samuel Lewis's warehouse receipts.

36th cross-question. Did he not offer to give you a receipt for the 212 tierces, either on a separate piece of paper or on the back of the warehouse receipt? Did he not then say that he was unable then to tell whether the 212 tierces made up the whole amount called for by the warehouse receipt? That if, upon examination, it should be found that the 212 tierces made up the full amount, then his receipt upon the back of the warehouse receipt for the 212, would, in fact, cancel it? Did he not say this in substance, if not in this exact language?

Answer. He did offer to indorse the 212 tierces on the warehouse receipt, and also said that he was not prepared to say that the 212 tierces made up the whole amount of hams, but have no recollection of his saying that if the 212 tierces made up the full amount then his receipt on the back would, in fact, cancel it.

37th cross-question. Do you not know that the 212 tierces did not make up amount called for by the warehouse receipt? Was there not an admitted deficiency in the pieces of from 600 to 700? Was there not a very much greater deficiency in weight?

Answer. The 212 tierces of hams, together with the amount of loose hams that I was ready to report to Mr. Roots, comprised the last of the hams received under the warehouse receipt. There was no pieces named in the warehouse receipt; there was a deficiency in the weight mentioned in the warehouse receipt, and the hams after being smoked, but the packers admitted that they were not particular as to the amount weighed into each cask.

(That portion of the above answer, commencing with "but the packers admitted, &c.," to the close of the answer, is objected by plaintiffs' counsel.)

38th cross-question. Do you include, in your calculation, the pieces sold to Albert Lewis?

Answer. I do those he received if they are not indorsed on the warehouse receipts.

39th cross-question. Do you not know that they were sold without the knowledge of the plaintiffs, and that Henry Lewis has never accounted to the plaintiffs or paid them for what was sold to Albert Lewis?

Answer. The plaintiffs were of the sale to Albert Lewis, and I was prepared to settle with them on the morning Mr. Roots refused to settle.

40th cross-question. Did they know anything of this sale until after it had taken place?

Answer. I think they did, as Mr. A. Lewis says he purchased them of Mr. Roots.

[Answer objected to by plaintiffs' counsel.]

41st cross-question. What relationship is there between Albert Lewis and Henry Lewis?

Answer. Brothers.

42d cross-question. Did not Mr. Roots tell you, on the corner of Third and Walnut Streets, that he would take the account and examine it?

Answer. Don't recollect that he did.

43d cross-question. Don't you know that he said that in substance?

Answer. I don't recollect that he did.

44th cross-question. Which way was he going with reference to his office; towards it, from it?

Answer. He was coming from his office.

45th cross-question. Do you not know that it was admitted in the warehouse of Henry Lewis that there was a deficiency of 600 to 700 hams, after the sale to defendants? I desire a direct answer.

Answer. Not to my personal knowledge.

46th cross-question. Who first spoke with you about testifying in this case; I mean the giving of your deposition before Mr. Birney as commissioner?

Answer. Judge Keys, attorney for the defendants, first notified me to appear before Mr. Birney as commissioner.

47th cross-question. I don't ask who notified you to appear. Had you not been spoken to about it before you was notified to appear? and if so, by whom was you first spoken to?

Answer. By Mr. McCullough, one of the defendants.

48th cross-question. But my questions have reference to the giving your deposition before Mr. Birney. How recently has Mr. McCullough been in this city?

Answer. Cannot say with certainty who first mentioned that I would have to appear before Mr. Birney as commissioner. Mr. McCullough was here during last fall.

49th cross-question. Did you not have a written brief of your testimony before you commenced writing down your testimony in chief?

Answer. I did.

50th cross-question. Did you not show that to Henry Lewis, or otherwise confer in anywise with him as to what your testimony was to be?

Answer. Mr. Lewis saw that brief; but that we conferred together as to what my testimony should be, we did not, so as to make impressions on my mind in any way.

51st cross-question. Did not Mr. Roots sell you some sour hams, parcel of the 415 hhds.? If so, are they paid for?

Answer. I bought some sour hams of Mr. Roots, 521 in number,

for Mr. A. Lewis, and they would have been paid for out of the bill for labor in covering the hams, if Mr. Roots had gone into the settlement heretofore referred to.

E. B. TOWNSEND.

Re-examined by Defendants' Attorney.

Question 1. State by whom, when, and for what purpose the paper styled in the cross-examination "a written brief of your testimony" was made.

Answer. It was written by myself last fall, for the purpose of sending to the defendants' counsel in Baltimore.

2d question. In what character did Roots & Co. act in relation to the property now in controversy? As principals or agents? For whom?

Answer. They acted as agents for Adams & Buckingham, of New York, and Graham & Buckingham, New Orleans.

Question by Plaintiffs' Counsel.

Was the written brief of your testimony referred to sent to defendants' counsel at Baltimore? If so, when did you get it back again?

Answer. Presume it was sent. It was not sent back. I kept a copy.

E. B. TOWNSEND.

Henry Lewis, for Defendants.

Henry Lewis, residing in the city of Cincinnati, aged fifty years or thereabouts, being produced, sworn, and examined on the part of defendants, deposes and says:—

1*st Question by Defendants' Counsel.*

State your residence and business, and all that you know relative to the ownership of the 212 tierces of hams in controversy in this suit, and all that you know relative to the purchase of the same by the defendants.

Answer. I am a resident of Cincinnati. I have been engaged in manufacturing provisions for the last twenty years or upwards. In the fall of 1853, I was engaged in packing provisions at Indianapolis, Indiana. I was one of the firm of David Macey & Co., of that place. That firm packed provisions for me, and on my account, during that winter. The hams referred above were cut at Indianapolis, and packed there, on my account. In order to enable me to do my packing at that point, and to raise money, I procured advances on Messrs. Adams & Buckingham, of New York, through their agents, Messrs. Roots & Co., of Cincinnati. I gave Messrs. Roots & Co. my drafts on Messrs. Adams & Buckingham, of New York; some of these drafts were negotiated at Indianapolis, others were

negotiated at Cincinnati, the proceeds of which went to pay for the hogs packed at Indianapolis.

The provisions were shipped from time to time; the barrel pork, I think, was shipped to Messrs. Adams & Buckingham, of New York. The lard I sold to my brother, Albert Lewis. The hams, bulk sides, and shoulders, were shipped to Cincinnati, and came into my warehouse. To raise a part of the money to pack the hogs at Indianapolis, I procured the warehouse receipts of my brother, Samuel Lewis, for barrel pork, lard, and buck meat, and passed those warehouse receipts into the hands of Messrs. Roots & Co., as security, to induce them to indorse my bills on Adams & Buckingham, of New York, a part of the proceeds of which was used at Indianapolis, for the purpose of paying for the provisions referred to above. I had paid off a part of the warehouse receipts of my brother, Samuel Lewis, in money, previously. At this time my brother, Samuel Lewis, being in very feeble health, was desirous to get up his warehouse receipts that he had previously given to Messrs. Roots & Co., and he offered to pay Mr. Roots the balance that he owed him on these warehouse receipts, with his commissions for advancing the same. Messrs. Roots & Co. refused to take it, demanding that the several articles, as specified in the warehouse receipts, should be turned out to them. After that, or about that time, Messrs. Roots & Coe, and myself, went into an account of the winter's business, by which I paid them a large amount of money, and agreed to smoke and put up in fancy style (as we call it), a portion of those hams referred to above.

The hams were estimated to be worth enough money to pay off, when sold, the debt that I owed to Messrs. Roots & Coe. Messrs. Roots & Coe, as a further security to them, wished me to procure the warehouse receipt of my brother Samuel for the delivery of the hams. I did procure that warehouse receipt. My brother gave it on the express condition that when that warehouse receipt was satisfied, all his former warehouse receipts should be given up and cancelled. A part of these hams, I think, had been sold at that time, or disposed of in some way. I had agreed with Roots & Coe, that if I sold those hams, I should account to them, at the rate of seven and a half cents (7½ cts.).

I think that was the price fixed on by us. I went on to smoke the hams to have them ready, and sold by the time my brother's warehouse receipt expired; which, I think, was somewhere about the first of May, between the first and third of May. The market grew dull; the price of hams receded, so much so, that I could not sell them at a price sufficient to net seven and a half cents in pickle, before the warehouse receipts of my brother fell due, and my own misfortunes in business prevented me from raising the money necessary to make up the difference; and, to save my brother, I was compelled to say to him, that he must give to Messrs. Roots & Coe notice that the hams were ready to be delivered as they were in

accordance with his warehouse receipt. My brother did give Messrs. Roots & Coe notice that the hams were ready, and wished them to come and receive them. Messrs. Roots & Coe, or one of the firm, called on me at my warehouse, and asked me if the hams were ready to be delivered, and if I was authorized to sign Samuel Lewis's name for that purpose. I told him I was. Messrs. Roots & Coe did not take the hams, but came up a short time afterwards, and we made an arrangement, by which I was to go on, cover and put up the hams in fancy style; I did go on, cover, brand, and pack the hams, and sold them in such lots as I could find purchasers for. I shipped some of them to Messrs. Adams and Buckingham, of New York, and sold different lots of them in this market. The last 212 tierces I sold to Messrs. McCullough & Culbertson, of Baltimore, Maryland. The hams above, of which the 212 were the remainder, were the 415 hhds. which I packed at Indianapolis. When the invoice of the last 212 tierces of hams, sold to Messrs. McCullough & Culbertson, was made up, I found myself in funds very near equal to the demands of Messrs. Roots & Coe on me at that time. I requested Mr. Townsend, my bookkeeper, to go down to Messrs. Roots & Coe and settle with them, and to give them an order on Messrs. McCullough & Culbertson for the proceeds of the 212 tierces of hams sold to them, and to take up and have cancelled the warehouse receipts of my brother Samuel that were then held by Messrs. Roots & Coe. Mr. Townsend returned, informing me that Messrs. Roots & Coe refused to settle and surrender the warehouse receipt, as we had told Messrs. McCullough & Culbertson to be prepared with their funds, as we wished to have a final settlement with Messrs. Roots & Coe that day, and it would take what moneys they owed us to settle with them. Mr. Townsend gave McCullough and Culbertson notice not to pay over to Roots & Coe any money.

(The plaintiffs object, having suggested, as the foregoing answer was being given, their objection to so much thereof as refers, explains or varies, exhibits *A*, *B*, *F*, and *G*, attached to these depositions, and to what witness says he said to Samuel Lewis, and Mr. Townsend, his bookkeeper, and what Samuel Lewis and Mr. Townsend said to witness.)

2d question. State all the facts relative to giving warehouse receipts by David Macey & Co. to Roots & Coe for the hams, of which the 212 tierces above mentioned were part; state the purpose for which they were given; and whether said hams were in store as stated in the receipts; and what knowledge Roots & Coe had as to the said hams being in store or otherwise.

(The above question is objected by plaintiffs' counsel.)

Answer. The warehouse receipts of David Macey & Co. (I don't recollect whether these warehouse receipts were given by David Macey, or David Macey & Co.) were given to secure Messrs. Roots & Co., for money and credits furnished to me for packing pork at Indianapolis. Those warehouse receipts were frequently given for

the products of the hogs, before said hogs were cut. I so informed Messrs. Roots & Coe. They were given for security alone. The hams were not all in store at the time the money and credits were furnished me, I think the warehouse receipts were all complied with afterwards, except as to some deficiencies in weight. It was the understanding between David Macey & Co., and Roots & Coe and myself, that this money and these credits which I received from Messrs. Roots & Coe were furnished on the warehouse receipts to purchase hogs with from which their hams (referred to above) were a part of the product. It was agreed between Messrs. Roots & Coe and myself, that I might sell this entire property at Indianapolis, refunding them, Roots & Coe, their advances to me with their full commissions.

(The above answer objected to, as whole statement is given to vary and change written instruments as giving understanding of witness, by pltffs' att'y.)

3d question. State in what manner advances were made by Roots & Coe, to be used in purchasing and packing meat by David Macey & Co., at Indianapolis. State how the advances and warehouse receipts corresponded as to time.

Answer. The advances were made in bills of exchange, drawn on Messrs. Adams & Buckingham, of New York; I think that I was the drawer of the drafts generally—Messrs. Roots & Coe indorsers. Some of those drafts were negotiated at Cincinnati, some by myself, some by Messrs. Roots & Coe; but I think the largest part of them were negotiated at Indianapolis.

I think the dates of the warehouse receipts correspond with the *with the* dates of the several drafts; corresponding to the valuation of the property specified in the warehouse receipts of the same date.

4th question. State how the proceeds of said drafts were applied.

Answer. The proceeds of said drafts were used by David Macey & Co. in purchasing hogs and other materials at Indianapolis, together with other funds which I furnished them from other quarters.

5th question. State what was done with the 415 hhds. of hams shipped by David Macey & Co. to Cincinnati, after they reached this place.

Answer. They were delivered at my warehouse.

6th question. State all the facts connected with the giving of the warehouse receipt marked Exhibit *A*. State the purpose for which it was given, and what knowledge, if any, Roots & Coe had of such purpose.

(Objected to by plaintiffs' counsel so far as said question relates to the purpose for which the said warehouse receipt was given.)

Answer. I think Messrs. Roots & Coe, and myself, went into an account of our affairs of that winter's business, and it would take about the result of the 415 hhds. of hams, estimated at seven and a half cents (7½ cts.), in pickle, to pay my debts to them, and to take up my brother Samuel's warehouse receipts for twenty-five hundred

barrels of pork, four hundred barrels of lard, one hundred thousand pounds of sides from the block, and one hundred thousand pounds of shoulders from the block. I was anxious to smoke the hams, to make, if possible, equal to seven and a half cents in pickle out of them. I was at that time becoming a little embarrassed in my business, and Messrs. Roots & Coe agreed that if I could procure my brother Samuel's receipt as security for the delivery of the hams, that they would wait for the amount due them, till I should have time to sell and make the best disposition I could of the hams. Thus it was that I procured my brother Samuel's receipt as security to Messrs. Roots & Coe, that I would account to them for the proceeds of the hams. Messrs. Roots & Coe knew that this warehouse receipt was given only as security, that I would account to them for the hams. Agreeing at the same time, that when I paid them what was equal to seven and a half cents in pickle, which would about discharge my liabilities to them, that they would then cancel this warehouse receipt.

(Plaintiffs' counsel objected to the above answer.)

7th question. State upon what agreement with Roots & Coe the warehouse receipts, prior to Exhibit *A*, were given by Samuel Lewis. State whether there was specific property to answer said receipts, and what knowledge Roots & Coe had on that subject.

(Plaintiffs' counsel objects to this 7th question.)

Answer. I procured of Samuel Lewis those several warehouse receipts, and passed them to Messrs. Roots & Coe as security for the moneys and credits received of them, a large part of which moneys and credits was used at Indianapolis, for the purpose of packing pork. I had no special agreement with Messrs. Roots and Coe, excepting what was contained in the warehouse receipts; excepting that Messrs. Roots & Coe agreed that whenever I paid them back advances with commissions on the full market value of the property, then there was to be a cancelment of the warehouse receipts.

Messrs. Roots & Coe inquired of me during the winter, if the pork and lard, placed on a lot on Sycamore Street, was a part of the property specified in those warehouse receipts? I informed them that I had pork and lard enough on that lot, and other places, to make good their warehouse receipts at any time they should call for it, to be turned out; but that I expected to sell the property, pay them their advances and commissions without resorting to the property. I did soon after this pay them a large amount of money on account of those warehouse receipts.

8th question. State to whom Roots & Coe made the advances; whose property were the 415 hhds. of hams when purchased, and when shipped from Indianapolis, and what change of ownership, if any, took place as to the 212 tierces, before the sale to defendants.

Answer. They made the advances to me. The hogsheads referred to were mine when purchased, and when shipped. As to the ownership, no change took place before the sale.

9th question. State by whom the 415 hogsheads, except as to said

212 tierces, were sold or otherwise disposed of after being received in your warehouse; and what connection, if any, had Roots & Coe with such sale, or other disposition of them?

Answer. I can't recollect to whom all the hams were sold; some of them were sold to Albert Lewis, and some to Mr. Ewing and others. I sold the other hams myself, or some of my clerks. Messrs. Roots & Coe had no control over the hams, and, I think, sold none of them.

10th question. State what was done with the shoulders, sides, and lard of the hogs from which the 415 hhds. of hams were cut.

Answer. I sold the lard to my brother Albert Lewis. I think the sides, and most of the shoulders, arrived here about the time the hams did. I disposed of all the sides and shoulders myself. A part of the shoulders I had smoked at Madison, Indiana; and the pork, I think, all of it was shipped to Adams & Buckingham, of New York.

11th question. Look at the paper marked exhibit *B*, and state whether it is signed by you; and state what agreement there was, if any, between you and Roots & Coe, as agents of Adams and Buckingham, as to any profits accruing upon hogs purchased by you, and advanced upon by Adams and Buckingham's agents.

(Objected to by plaintiffs' attorney, if agreement called for was in writing.)

Answer. The exhibit marked *B*, is signed by me. I was indebted to Messrs. Adams & Buckingham for moneys due them on the previous year's business. There was an agreement between Messrs. Adams & Buckingham and myself, whereby they were allowed to credit my previous year's account with one-half of the net profits made on this year's business. The other half profits was to be subject to my order. I think the contract was in writing. I think I have it at my office.

(And plaintiffs' counsel objects to so much of the above last answer as refers to the contents of such written contract.)

12th question. State any facts within your knowledge concerning the giving of the notice marked Exhibits *F* and *G*. State what was done, if anything, by Roots & Coe, after said notices relative to the 415 hhds. of hams.

Answer. The notice marked F, I requested Mr. Townsend to serve on Messrs. Roots & Coe. He returned, and informed me that he had served said notice. Mr. Coe, of the firm of Roots & Coe, called on me the day my brother's warehouse receipt was due for said hams. He asked me if I was authorized by my brother to sign that notice, and if I was his agent for the purpose of delivering those hams, according to his warehouse receipt? I think that Mr. Roots called once with Mr. Coe; I will not be certain of that, however. Mr. Aydelott, the bookkeeper of Messrs. Roots & Coe, was there at one of the interviews, I think. I have no knowledge of Exhibit *G*, excepting what my bookkeeper, Mr. Townsend, has told me. I may have seen a copy of it, but I do not recollect. Messrs. Roots & Coe

called on me soon after that date, and made an arrangement with me, by which I agreed to canvas and yellow-wash said hams.

(Plaintiffs' counsel objects to the first two sentences of the above answer.)

13th question. State how long after the delivery of said notices it was, when Roots & Coe made the arrangement for canvassing, &c.; and what time was requisite for your preparing the hams for market pursuant to said arrangement.

Answer. I cannot state positively, but think it was within two or three days afterwards. With only ordinary exertions, it would require some two or three weeks to put said hams in preparation for market.

14th question. State what contract or claim of any sort Samuel Lewis exercised or asserted touching said hams after the giving said notices.

[Plaintiffs' counsel objects to this 14th question.]

Answer. Samuel Lewis exercised no control whatever over the hams after said notices were given.

15th question. State all that occurred between yourself and Roots & Coe after the sale to the defendants, relative to the proceeds of the 212 tierces, and to the warehouse receipts of Samuel Lewis.

[Plaintiffs' counsel objects to the last clause of this question.]

Answer. I had frequent interviews with Messrs. Roots & Coe, and urged upon them to take the money that I then offered them, the proceeds of the 212 tierces making a part of that money. They refused to make the settlement with me, and give up my brother's former warehouse receipts, claiming as a reason for such refusal that the money I offered them was less than the amount that they were entitled to. I think the difference that we differed about at the time was from five to seven hundred dollars. I urged Messrs. Roots & Coe to receive the money, give me up the warehouse receipts, and I would pay to them the balance of their claim at the earliest day possible.

16th question. State what you mean by the balance of their claim. State also whether Roots & Coe still hold the warehouse receipts mentioned in your last answer.

Answer. The six or seven hundred dollars named in my previous answer Messrs. Roots & Coe claimed, was due them to entitle Samuel Lewis to his warehouse receipts. I claimed that the money I offered him was all that he was entitled to, and that he should give up those receipts. They still hold said receipts.

17th question. State what was done by you after the refusal of Roots & Coe, as above mentioned, relative to the proceeds of the 212 tierces.

Answer. I was indebted to Messrs. McCullough & Culbertson on the previous year's business. When Mr. McCullough was about to return home, having still strong hopes that Messrs. Roots & Coe would settle with me, and cancel those receipts of my brother's, and

fearing that Messrs. McCullough & Culbertson would pass the proceeds of the 212 tierces of hams to the credit of my old account, I required of them, and procured their written agreement to accept my draft on them for the proceeds of said hams. Messrs. Roots & Coe continuing to refuse a settlement, I directed them, Messrs. McCullough and Culbertson, to pass the proceeds of said hams to the credit of my account.

[Plaintiffs' counsel objects to the whole of the above answer.]

18th question. State whether you have possession of the written agreement mentioned in your last answer, and if so, produce it and attach it to your deposition. State generally the condition of accounts between yourself and McCullough & Culbertson after crediting yourself with the proceeds of the 212 tierces.

[Plaintiffs' counsel objects to the 18th question.]

Answer. I have possession of the written document referred to in my last answer. This paper marked exhibit *H*, hereto attached, and made a part of this deposition, is the document referred to. I cannot tell exactly, but think that after I received credit by Messrs. McCullough & Culbertson for the proceeds of the 212 tierces of hams, I shall still be in their debt about twenty-one thousand dollars ($21,000).

Cross-examined.

And said deponent (Lewis) on cross-examination by plaintiffs' counsel, states further, as follows, viz:—

1st cross-question. At what time did David Macey & Co. commence buying, and what time did they commence cutting hogs in fall of 1853?

Answer. I don't recollect the exact time they commenced. My impression is that they commenced about the last of November, but it may have been along the first of December before they commenced.

2d cross-question. What number did they cut for you that season?

Answer. I don't recollect the exact number, but I think it was over twelve thousand head. I can't undertake to be accurate, as I speak from recollection alone.

3d cross-question. At what time was the first advance made you on product of their cutting, by pl'tffs?

Answer. I can't recollect the exact date, not having my books or papers here; but it must have been about the time of their commencing the killing and packing.

4th cross-question. Was it made in pieces or pounds?

Answer. I think that the warehouse receipts were all made for pounds or barrels.

5th cross-question. What portion of product so advanced upon was in barrels, and what in bulk?

Answer. It is impossible for me to give the particulars, other than to say that the heavy sides were made into mess and clear pork, and

packed in barrels; all the balance of the hog was estimated by the pound.

6th cross-question. What papers were executed at the time such advance? Name them.

Answer. I don't know that I can name all the papers that may have been executed; but, as a general rule, when I received the draft from Messrs. Roots & Coe, I handed them the warehouse receipts of David Macey, or David Macey & Co., and my brother Samuel's. These are all that I remember.

7th cross-question. To whom was the warehouse receipt executed?

Answer. The warehouse receipts were executed either to Messrs. Roots & Coe, or to Messrs. Roots & Co., agents for Adams and Buckingham, of New York. I don't recollect which.

8th cross-question. To whose order were the drafts made? Did your name appear upon them, and did you negotiate any of them at Indianapolis? If not, why not?

Answer. I don't recollect; but my impression is that the drafts were made by myself, and indorsed by Messrs. Roots & Coe. In this I may be mistaken, as I speak from recollection only. They may have been made to the order of David Macey, or David Macey & Co. My name did appear on all the drafts, if I mistake not. I negotiated some of the drafts here in Cincinnati myself, and I think Messrs. Roots & Co. negotiated some here, but David Macey negotiated most of them at Indianapolis. Those negotiated here had not David Macey's name upon them. I think I was not at Indianapolis very often during the winter, and, of course, did not engage in negotiating drafts at Indianapolis.

9th cross-question. Look at papers now shown you, marked *A* 1, *A* 2, and say whether these papers were respectively executed and delivered to plaintiffs by D. Macey & Co. and yourself at the time of the first advance made as above mentioned.

Answer. These papers were executed by myself and David Macey & Co. for the purposes for which they purport to have been made, but I am unable to state whether they were made at the time the first advances were had of Messrs. Roots & Coe. I see that I find on examination that the warehouse receipts of David Macey, and I think those of my brother Samuel, were made to me, and I indorsed them over to Messrs. Roots & Coe for account of Messrs. Adams and Buckingham.

10th cross-question. Was there at any time any other paper or written agreement as to this transaction executed by the parties, or either of them? Where is it, and what is it? If you have it, please produce it.

Answer. I don't understand what is meant by "this transaction." Tell me what transaction is referred, and I will answer.

11th cross-question. I mean the transaction referred to in papers marked *A* 1 and *A* 2, hereto attached.

Answer. My impression is that there were a number of this class

of papers executed during the winter, but I cannot now call to recollection the exact character of such papers. I have papers that were executed by the parties in relation to this business after the property arrived at Cincinnati, which, I think, are on file amongst my papers, and I can produce them.

12th cross-question. Continuing the request for all new papers, we inquire whether you understand that cross-interrogatory No. 10 has reference to the advance made, the property and contracts in papers *A* 1 and *A* 2, and to that transaction merely?

Answer. I answered cross-interrogatory No. 10 with reference to papers passing between the parties from December (the time this business commenced) until the property was brought here and disposed of—say as late as May following.

12*th cross-question.* If any paper was executed by the parties, or either of them, changing contracts as contained in papers *A* 1 and *A* 2, where is it, and what is it? I inquire for style of paper merely, and not its contents.

Answer. I think there were at least two papers executed by the parties, in relation to the smoking, packing, and disposition of the hams belonging to this transaction. I think I have those papers, and can produce them.

13th cross-question. Was the statement in exhibit *A* 2, "now at Indianapolis as per David Macey & Co.'s warehouse receipt," &c., true or not true?

Answer. It was true according to the understanding of all parties at the time it was made.

14th cross-question. Was it true as it stands, and as any intelligent reader understands it?

Answer. It was understood between myself and David Macey, and if I am not very much mistaken, I think I intimated to Messrs. Roots & Coe that the money advanced by them was for the purpose of purchasing hogs, and those hogs were to be manufactured into articles answering to the several warehouse receipts and memorandums accompanying the same. There were no pretensions by any of the parties, in fact, although it shows so upon the papers, that these several articles were all in the warehouse ready to be rolled out at the time the several advances were made. Mr. Macey, at the time, was considered a man very responsible, the parties had full confidence that he would not dispose of the money without being able to answer to all his warehouse receipts.

[Plaintiffs' counsel objects to this answer as not responsive to the question.]

15th cross-question. If you are not very much mistaken, and any intimation was given that the money advanced was for the purchasing of hogs, and that the property called for in the warehouse receipts was not cut or not in store, to which of the the plt'ffs was it given, and when, and where, and who was present?

Answer. I think I conversed freely upon this subject with Mr.

Roots. It was part of the contract that this property was not to be removed from Indianapolis, if it could be sold there in accordance with the views of the parties; and if it could not be sold there, it was to be moved in time to reach whatever place it was to be shipped to, in time to raise the money to pay the drafts drawn against property. I have no recollection of having said in any of my answers that David Macey had not the property, and could not have answered his warehouse receipts.

[Plaintiffs' counsel objects to all the above answer, except the first paragraph.]

16th cross-question. What did you say to Mr. Roots, if anything, as to the property not being on hand called for by the warehouse receipt; who was present; where was it?

Answer. I don't recollect of any conversation with Mr. Roots in which I told him there was no property to answer to the warehouse receipts. In my previous answers I have referred to an intimation that passed between us, and a general conversation on the subject. I forwarded large sums of money to Indianapolis to be used by David Macey to purchase property to assist in answering the warehouse receipts referred to, in addition to the advances received from Messrs. Roots & Coe, in the shape of drafts, to be negotiated at Indianapolis, from which I have no doubt David Macey had purchased and prepared property for the filling of those warehouse receipts.

[Objected to.]

17th cross-question. Was any intimation given to Mr. Roots at the time of your indorsing to him the warehouse receipts, that the property named in the warehouse receipts was not in store; if so, in what language was it given?

Answer. I don't recollect the exact language used in conversation with Mr. Roots on the subject: but I am satisfied that in my conversations with him he must have understood me, that the money thus advanced was to purchase hogs with; and that we both concurred in the responsibility of Mr. Macey, and that he would not suffer his warehouse receipts to go out if he was not able at any time to make it good. I am satisfied that I must have told Mr. Roots that the hogs was probably in the pens at the time that these drafts were advanced, from which the various articles were to be manufactured, as specified in the receipts. I do not know that David Macey ever gave a warehouse receipt without the property in store to fill it; but my impressions and *and* made up from the fact that he had large sums of money on hand at times when he had not packages of provisions enough in his house to represent that money; and I supposed and knew from conversations with Mr. Macey that he never gave a warehouse receipt without he had hogs previously prepared to manufacture the articles from.

(Plaintiffs' counsel objects to the above answer, as the inquiry was not as to what was to be done with the money, but simply as to the property called for by the warehouse receipt. Plaintiffs also object

to what he says was understood by Mr. Roots, to what he states as his own impressions and suppositions, and what he says he supposed from conversations he had with David Macey.)

18th cross-question. Look at papers marked "*A* 3," and "*A* 4," also at "*A* 5," and "*A* 6," also at "*A* 7," and "*A* 8," also at "*A* 9," and "*A* 10," also at "*A* 11," and "*A* 12," and state when they were executed and delivered to plaintiffs.

The said papers are hereto attached, being marked as aforesaid, and made a part of this deposition.)

Answer. I have examined the papers referred to, and I have no doubt that they were executed and delivered on the dates which they bear upon their faces.

19th cross-question. If any other agreement or agreements in writing were made by the parties, or either of them, as to the subjects matter of said warehouse receipts, and said accompanying agreements, state, where, when, and by whom they were executed, and where they now are. If you have any such, please produce them.

Answer. There may be other written memoranda referring to this business, but I cannot recollect at this time any others that I have not already alluded to.

20th cross-question. Did you, David Macey & Co., and plaintiffs meet during the cutting season in question as to this business? If so, when and where?

Answer. We may have met during the time alluded to, but I have no recollection of such a meeting.

21st cross-question. You say the 415 hhds. hams, shipped by David Macey & Co. to Cincinnati, were delivered at your warehouse. Were they shipped to you? To whom were they shipped?

Answer. I do not recollect to whom they were shipped, they came into my possession either by a railroad receipt made at Indianapolis, or an order from Messrs. Roots & Coe for the property. Boats sometimes delivered the property thus shipped to my drayman without any order from any one; and it might have been the case in this instance.

22d cross-question. Was a railroad receipt or bill of lading of any of these shipments ever sent you? If so, where is it? If you have any such, please produce it.

Answer. I have no recollection on that subject further than I have stated in my last answer.

23d cross-question. Have you meant to be understood as saying that you controlled the property covered by these warehouse receipts while at Indianapolis, or its shipment to Cincinnati?

Answer. I do mean to be understood, that by special contract between myself and Mr. Roots, I had a right at any time to refund to Mr. Roots his advances with his charges, by paying commissions on the market value of the property. I mean by market value, that if he advances eight dollars on mess pork, and pork was worth twelve dollars ($12) when I sold it, they were to be allowed commissions

at the rate of twelve dollars ($12) a barrel. I was allowed by Messrs. Roots & Coe to control and sell this property, and pay them over the money for their advances.

(Plaintiffs' counsel object to a statement of special contract, unless contract is produced.)

24th cross-question. Did you not buy portions of this property of plaintiffs? Did you not desire pl'tffs not to ship same to Adams and Buckingham, but to give you the privilege of buying same before the maturity of the drafts, the hams at 7½ cts. and the bulk sides at 5½ cts.? Did you not buy the lard and pay them for it?

Answer. I sold the lard to my brother Albert Lewis, and directed him to pay over to Messrs. Roots & Coe the money. I think that I kept all the sides and shoulders named in the several warehouse receipts, and handed over to Mr. Roots what was equal to the then market price of such articles. The cask hams arrived *arrived* here very much out of order, and were very delicately cured. Many of the hogsheads had lost part of their pickle, and I urged on Messrs. Roots & Coe the necessity of disposing of them or smoking in this market, as there would be great danger in losing them if they were shipped to New York.

25th cross-question. Had plaintiffs given you any authority to sell the lard to A. Lewis? If so, state when and in what language it was done? Was there anything more than this as to either the lard or other portions of the property that you desired to buy if possible, and that they were willing to sell to you at any time before the maturity of the drafts at the rates named in question 24?

Answer. I know of no authority that was not mine at the time the money was advanced, as I have stated in one of my previous answers. I needed no permission of Messrs. Roots & Coe, as that was part of the original contract, that I was to have a right to sell the property at any time, by paying them their advances and their full commissions. I have no doubt that I advised Messrs. Roots & Coe in all these sales, as we at one time talked of selling the lard to a manufacturer in this city, and the lard was delivered at Lawrenceburg instead of Cincinnati to the purchaser. I have no doubt but it took an order from Messrs. Roots & Coe to the railroad agent at Lawrenceburg to get possession of the lard, as it had been previously shipped to their order.

(Pl'tffs' counsel object to the statement of witness as to what was part of the original contract.)

26th cross-question. What do you mean by the expression "we at one time, &c.?" Who talked of selling?

Answer. Mr. Roots and myself had a conversation in relation to the sale of this lard; as our interests were mutual as to the price the lard brought, we advised with each other as to the propriety of letting this house have it at the price they had offered. I think Mr. Roots informed me that this house would give a certain price for the lard, and I think I objected to selling it at the price offered, and that the sale was not made.

27th cross-question. Was there any other reason why the property was not shipped to Adams & Buckingham, and why it was delivered at your warehouse, than your desire to buy it and their willingness that you should, as stated in previous interrogatories ?.

Answer. I don't know that I ever proposed to purchase the property. I considered the property already mine. Messrs. Roots & Coe only held a lien upon the property for their advances, commissions, &c.

28th cross-question. Do you question the authority of D. Macey & Co. in executing the warehouse receipts ?

Answer. I don't understand what is meant by the terms " Do you question D. Macey & Co.'s authority."

29th cross-question. I mean simply to ask whether they had a right to execute the warehouse receipts. Do you question their right in so executing them ?

Answer. I had no right to question their right to give any receipts that they saw proper to give that were in accordance with our contract. I have no doubt that they had a right to give that class of receipts.

30th cross-question. Have you not already said you was a member of the firm of D. Macey & Co. at the time these warehouse receipts were executed? Did you not indorse and deliver all these warehouse receipts to pl'tffs ?

Answer. I think I have said so. I was one of the firm of David Macey & Co., and I did indorse and deliver the warehouse receipts above referred to.

31st cross-question. Were not the 415 hhds. hams delivered at your warehouse with the expectation that you was to buy and pay for them before the drafts became due, and so as to return the amount advanced ? was you not unable to do this ? Did not plaintiffs thereupon desire to ship them to New York ? and did you not then suggest the giving of your brother Samuel's warehouse receipts ?

Answer. After the hams had been delivered to my warehouse, Messrs. Roots & Coe wished them to go forward to New York. I told them they were not in a condition to ship, and objected to their being shipped. I did not propose to purchase the hams, for I then told Mr. Roots that he had no right to control the Indianapolis packing any further than his lien for advances affected it, or might give him that right. We then went into an estimate of our accounts, including the warehouse receipts of Samuel Lewis, as well as D. Macey & Co., taking into account the money advanced on them all ; and I think I paid them in cash at that time all their claims against the parties for such warehouse receipts, excepting what the hams would fetch at the rate of seven and a half cents ($7\frac{1}{2}$) per pound in pickle. We went into a contract in writing in relation to the mode in which I should smoke and dispose of the hams, which contract I refer to as part of this answer (said contract is heretofore referred to, and

attached, being marked "exhibit *B*"), Messrs. Roots & Coe agreeing to this mode of paying them the balance of their advances and charges on condition that I would get the warehouse receipt of my brother Samuel for the delivery of said hams within thirty days from that time.

32d cross-question. Were you in the habit that season of giving to parties from whom you received advances the warehouse receipts of your brother Samuel?

Answer. If my recollection serves me right, I did not procure his warehouse receipts that season for any person except for Messrs. Roots & Coe.

33d cross-question. Did you that season hold property in your warehouse in your own right, not covered by a warehouse receipt or mortgage?

Answer. I was doing a very large business that season. I don't now recollect of having given a mortgage to any one, for property in the warehouse. I did have a very large amount of property that was not covered by warehouse receipts, and in my own right in the warehouse.

34th cross-question. Was there any of this property shipped from Indianapolis to Adams & Buckingham? if so, what was it, and how was it shipped? by whom and through whom?

Answer. The pork was sent from Indianapolis to Madison, was shipped from there to New Orleans, and thence to New York. I contracted for the shipping of the pork from Madison. I don't know in whose name the bills of lading were taken, that is, I don't recollect, although I made the contracts myself. Since commencing this answer, I think it is possible that some of this property may have gone by way of Pittsburg, and it may have come by way of Lawrenceburg.

35th cross-question. Look at papers now shown you marked "*B* 1," "*B* 2," "*B* 3," "*B* 4," "*B* 5," and "*B* 6," and say whether the property mentioned in said papers is not the same referred to in your previous answer.

Answer. I have examined the papers referred to above. The property mentioned in said papers appears to be a part of the property packed at Indianapolis referred to in my previous answers.

36th cross-question. Did you not, after the 415 hhds. hams were received at Cincinnati, and on or about the 5th April, 1854, buy 84½ hhds. of them and pay for some to pl'ffs?

Answer. I gave the plaintiffs what money the said hogsheads of hams would come to at the rate of seven and a half cents a pound, and took his receipts for the same amount. I did not purchase said hams from plaintiffs.

37th cross-question. Was not a portion of these 415 hhds. hams shipped to Adams & Buckingham? If so, state in what parcels and at what times, and who were the shippers.

Answer. A portion of them was shipped to Adams & Bucking-

ham, New York. I don't recollect the exact proportions—excepting from receipts on the back of Samuel Lewis's warehouse receipt for said hams, which I presume gives the correct number. (This warehouse receipt is heretofore referred to, and is attached as "Exhibit *A*," in the examination in chief of the witness.) I think I made an arrangement to have those hams sold in Philadelphia. I know I wrote to Messrs. McCutchin & Collins in relation to it; whether they were so sold, I don't now recollect. I don't recollect in whose name the bills of lading were taken, it being customary here frequently to ship property in the name of the party who makes the advances on the same.

37*th cross-question.* Did you ever forward a bill of lading of any of this property to Adams & Buckingham? If so, please produce copies of your letters inclosing them, if you have copies.

Answer. As I have said in my previous answers, I do not now recollect in whose name the property was shipped. If I did not ship the property in my own name, I cannot *I cannot* produce the bills of lading—and I do not recollect of having forwarded bills of lading, although I may have done so.

38th cross-question. Was there any difference as to the ownership of the hams and the barrel pork, immediately after the advances were made upon them at Indianapolis?

Answer. I considered that there was no difference of ownership. I had a right to sell the pork after it was shipped at Madison, or Lawrenceburg, or Indianapolis, on condition that I first paid their advances, charges, and full commissions.

38th cross-question. But how would you have sold property, either the barrel pork or the hams, when in transit receipted for the plaintiffs, and to be delivered to Adams & Buckingham? How do you say such property was yours, when you had neither the possession nor the right of possession?

Answer. The pork when at Madison or at Lawrenceburg, was shipped to the order of Roots & Coe, I think. It was by a special contract between Messrs. Roots & Coe and myself, that gave me the right to sell the property at any time before it was shipped on the steamboats for the east, and thus it was that I exercised the right to sell the lard at Lawrenceburg, as I did.

(Plaintiffs' att'y objects to so much of the foregoing answer as refers to a contract, the same not being produced.)

JAS. BIRNEY, *Com'r.*

40th cross-question. In whose name was the lard sold? If in yours, did you not pay pl'tffs for it? and was it not settled for as if sold by them to you?

Answer. The lard was shipped from Indianapolis, as I have heretofore stated, to the order of Messrs. Roots & Coe, I think. I sold the lard myself, to Albert Lewis. I am satisfied that it required an order from Roots & Coe to the conductor of the railroad or its agent,

at Lawrenceburg, to deliver the lard over to Albert Lewis, or to some person acting for him. I directed my brother Albert to pay Messrs. Roots & Coe the money; whether I made the bill to Albert, or whether Messrs. Roots & Coe made it, I cannot now be positive.

41st cross-question. Look at paper now shown you and hereto attached, marked "*D* 1," and say of what it is a copy.

Answer. I have looked at paper marked as above, and I think it is a copy of a contract that had been executed by the parties named therein, and was executed at the date it bears upon the face of. This appears to be a copy of the contract then executed, but as I have not the original contract to compare with this, there may be some variations in the terms.

42d cross-question. Have the moneys due from you to Adams and Buckingham on the account of 1852 and 1853, yet been paid off?

Answer. Messrs. Adams and Buckingham have refused positively to render me an account of sales of my business with them, so that we have not had a chance to come to a final settlement. My impression, however, is that I shall owe Messrs. Adams and Buckingham something on final settlement.

43d cross-question. But do you not know that you are indebted to them on that season's account, and did you not know this at the time the contract, of which paper *D* is a copy, was executed?

Answer. I have stated in my last answer, I have no doubt that I was indebted to Messrs. Adams and Buckingham at the date of that contract, and I think I must still be indebted to them, although we have had no final settlement showing that fact.

44th cross-question. How much do you now owe them?

Answer. It is impossible for me to answer that question, as I have no knowledge by which the answer would be accurate.

45th cross-question. At the time you say, the notice of which Exhibit "*F*" is a copy, what portion of said 415 hogsheads hams were yellow-washed and packed? What portion of same was canvassed?

Answer. I think that none of them were yellow-washed or canvassed, and of course none could be packed.

46th cross-question. From whom, and when did you obtain, the muslin to canvas them?

Answer. Messrs. Roots and Coe furnished the muslin, and soon after the 1st of May, in time to canvas the hams.

47th cross-question. Do you know the amount plaintiffs paid for it, and from whom they purchased it?

Answer. I do not know the cost, nor of whom they purchased. It is possible that I may have purchased, but they paid for it.

48th cross-question. At what time were all the 415 hogsheads containing 900 pounds net weight each, smoked, canvassed, yellow-washed, and packed?

Answer. The hogsheads did not contain 900 pounds each, although the warehouse receipt of Samuel Lewis fixed that as the weight, yet it was not correct. I think they were all canvassed, smoked, yellow-

washed, and packed during the month of June; but as I state this from recollection only, I cannot say that I am accurate as to date.

49th cross-question. When, as you have stated, you "was compelled to say to your brother that he must give to Roots and Coe the notice, &c.," did you bear in mind the agreement with Adams and Buckingham, as in paper *D*, your indebtedness to them, your agreement to canvas, &c., Exhibit *B*, and Samuel Lewis's agreement to deliver smoked, canvassed, &c., Exhibit *A*?

Answer. At the time I informed my brother that he would have to deliver the hams to Messrs. Roots and Coe, in accordance with his warehouse receipt as per Exhibit *A*, I knew that I was in debt to Messrs. Adams and Buckingham. My impression is, that I informed Messrs. Roots and Coe, previous to the giving of that notice by Samuel Lewis, that I should not be able to comply with my contract with them as per Exhibit *B*, and I think I was fully impressed with a sense of the obligation that I was under to Messrs. Adams and Buckingham, growing out of the contract between me and them as per Exhibit *B*, and whether I bore it in mind or not, it bore heavily on my mind at the time.

50th cross-question. When the invoice of the 212 tierces was made up, what amount did claim or admit you owed the plaintiffs?

Answer. At the time the 212 tierces were packed and the account made up, the proceeds of those 212 tierces at the price I sold them at, and the money on hand, which I tendered to Messrs. Roots and Coe, would, according to my view of it, make a full settlement of that year's transactions, and entitle me to the warehouse receipts of Samuel Lewis as well as those of David Macey and Co. There was somewhere between six and seven hundred dollars, I think, which Messrs. Roots and Coe claimed, and as between me and Messrs. Roots and Coe, I think I admitted that amount due them, or about that amount.

51st cross-question. In what funds did you offer to pay that amount?

Answer. I offered to give them an order on Messrs. McCullough & Culbertson, one of the firm being in the city at that time, for the proceeds of the 212 tierces of hams, and the balance in money.

52d cross-question. What do you mean by the word "balance?" what was it as your claim?

Answer. I mean the balance of money, in addition to the proceeds of the 212 tierces of hams, as being sufficient to entitle me to the warehouse receipts of Samuel Lewis, as heretofore referred to. I cannot recollect the amount of money it took to take up these receipts.

53d cross-question. What was about the amount then as you claimed it to be?

Answer. I cannot state the amount without referring to my papers on the subject.

54th cross-question. Do your books show that amount? If they do, will you be kind enough to produce them?

Answer. They do show that amount, and I will endeavor to produce them.

55th cross-question. Did you offer plt'ff's different amounts at different times?

Answer. I think I was never prepared to settle with plaintiffs, until I sold the 212 tierces of hams. My impression is that that was the only time that I offered a settlement in money.

56th cross-question. Do I understand you to say that you tendered to Roots & Coe the whole amount you admitted to be due?

Answer. You understood, or I meant to be understood to say, that I tendered to Messrs. Roots & Coe all that they had a right to claim before surrendering the warehouse receipts of Samuel Lewis.

57th cross-question. What claim could they have had after the warehouse receipts were satisfied?

Answer. I think the difference of opinion between Messrs. Roots & Coe and myself grew out of the fact that he claimed that Samuel Lewis should be responsible for 900 pounds of hams in each cask, whereas I claimed that the words 900 pounds should never have been in the receipts, and that there was never that amount in the casks. He claimed that he had a right to hold back Samuel Lewis's former warehouse receipts until he received what was equivalent to the proceeds of 900 pounds of hams to each cask. There may have been some other little matter which made a part of this difference, of which I do not now recollect.

(Plaintiffs' counsel objects to this answer.)

58th cross-question. What did you mean by saying, in your examination in chief, "I found myself in funds very nearly equal to the demands of Roots & Coe?"

Answer. I meant to say that I had very near funds enough to pay off all the demands of Messrs. Roots & Coe against me for that year's transactions, so far as was necessary to take up the former warehouse receipts of Samuel Lewis, Messrs. Roots & Coe claiming some six or seven hundred dollars more than I admitted was necessary for that purpose.

59th cross-question. Do you not know that when Mr. Townsend called on plt'ffs demanding their delivery up of the warehouse receipts upon the terms you proposed, the amount justly due plt'ffs was not offered?

Answer. Mr. Townsend and myself made up the account; my impression is that he tendered them all that they had a right to claim for the delivering up of those warehouse receipts. As I have stated heretofore, there was a difference of opinion between Mr. Roots and myself of from five to seven hundred dollars, that I should owe them individually.

60th cross-question. Was your account ever furnished plt'ffs until it was presented as above by Mr. Townsend?

Answer. I can't recollect now, whether it was or not. My impression, however, is, that it was, or at least he must have known what it was. On reflection, I doubt whether it could have been presented, as the invoice of hams was probably not made up till that morning.

61st cross-question. Do you not know that when the account was presented, that plt'ffs said that before they could settle, it would be necessary for them to examine the account? Did they not say this, or something like it?

Answer. I don't know what they did say. I was not present when the account was presented.

62d cross-question. When did you first have an interview with them on the subject of the account?

Answer. I have no recollection of any one interview. Mr. Roots and myself were in the habit of meeting almost every day; and when we met, the subject of this business formed a part of our conversation.

63d cross-question. When was it you promised to pay them "at the earliest day, the balance of their claim?"

Answer. I think I conversed with Mr. Roots on that subject previous to Mr. Townsend presenting the account; and I think we had interviews on the subject afterwards. I can't undertake to be accurate as to the exact time that I saw Mr. Roots, but I think I urged the importance of a settlement in two or three interviews about that time, and at these interviews promised to pay him the balance at the very earliest day possible.

64th cross-question. What number of pounds as called for by warehouse receipt Exhibit *A* was accounted for?

Answer. It is impossible for me to tell without reference to the accounts themselves, and to my books; when that warehouse receipt marked Exhibit *A* was made, we supposed the hams had been weighed in the casks accurately, but we learned afterwards that they were packed without weighing, many of them when the hams were frozen and stiff, and I thus account for the falling short of the weight of the hams.

(Plaintiffs' counsel objects to this answer as not responsive.)

65th cross-question. Will you be kind enough to furnish a statement from your books of the number of pounds accounted for?

Answer. I will furnish such statement.

66th cross-question. How many hams did pl't'ffs claim were short?

Answer. I am still unable to answer that question, as it is impossible to state it from recollection.

67th cross-question. Did you not know that so soon as pl't'ffs had made examination of the account, they claimed that some three thousand dollars were due them after deducting the amount that should have been paid them for the 212 tierces by defendants?

Answer. I do not know any such fact.

68th cross-question. Do you say the pl't'ffs ever claimed a less amount as their due? If so, when, where, and who were present?

Answer. I have no recollection of the pl't'ffs ever setting up any such claim as that referred to, either with me alone, or in presence of others.

69th cross-question. When did you direct defendants to pass to the credit of your account the proceeds of the 212 tierces?

Answer. I cannot state from recollection, it was a short time after Messrs. Roots & Coe refused to settle and give up the warehouse receipts of Samuel Lewis.

70th cross-question. Have you not stated since the taking of these depositions was commenced, that the pl't'ffs ought to have this money from the defendants?

Answer. I have no recollection of making any such statement. I think I have stated that it was a matter of indifference to me which one of them got it, and may have stated at the time the settlement was broken off, that I was still in hopes that Messrs. Roots & Coe would consent to settle as I had proposed, and give up the warehouse receipts.

(No further questions to ask until books, statements, &c., as called for, are furnished pl't'ffs' att'y.)

Examination resumed by Defts' Counsel.

1st question. State where Samuel Lewis resided when he gave the warehouse receipts mentioned in this deposition; what was his business? What was the condition of his health? What actual knowledge, if any, did he have concerning the property mentioned in said receipts, and what possession or control, if any, did he exercise over said property?

Answer. He resided in Greene Township, Hamilton County, Ohio, about eight miles from Cincinnati; he was in no business except attending to his farm; his health was very poor, so much so, as scarcely to be able to leave his house. I do not think he ever saw any of the property referred to, as described in said receipts; he exercised no control over said property; he gave the receipts to Mr. Roots as security to him that I would carry out my contract with Messrs. Roots & Coe.

[Pl'ffs' counsel objects to so much of the above question commencing "what actual" the close thereof.] J. B., *Com'r.*

2d question. State whether the facts stated in your last answer were known to Messrs. Roots & Coe, and how you know as to their knowledge of them.

[The above question objected to by plaintiffs' counsel.]

Answer. The facts stated in my last answer were known to Messrs. Roots & Coe. Messrs. Roots & Coe required the warehouse receipts of Samuel Lewis as security against any contingency that might

happen to me. About the first of April of that spring, ('54) Mr. Roots visited with me my brother, and knew that he was in very feeble health, and at that interview my brother proposed to pay Mr. Roots all the money due him on the warehouse receipts he then held of my brother's, giving as his reason that he wished to settle these warehouse receipts, that he did not expect to live but a few days, and did not wish to leave any unsettled business.

3d question. You have spoken in this deposition of an agreement made by you with Messrs. Roots & Coe, after the notice given them by Samuel Lewis, marked exhibit "*F*," by which agreement you were "to go on, cover and put up the hams in fancy style." Was this agreement the same as the written agreement attached hereto, marked exhibit "*B*," or was it a verbal agreement, and what were its terms?

[Pl'ffs' counsel objects to so much of question as inquires for terms of a verbal agreement.] J. B., *Com.*

Answer. The agreement was not the same as marked exhibit *B*. I have spoken somewhere in one of my answers of two written agreements between Messrs. Roots & Coe and myself, on the subject of these hams. The one I am now about to speak of is the one that I supposed was in writing, but on reflection I am not certain that it was in writing. I will now state it. As I had failed to be able to carry out contract *B*, Messrs. Roots & Coe entered into another contract with me by which they agreed to furnish me the muslin and the paper, and other materials to prepare these hams for market, and I was to give him an additional security in my own note indorsed by Samuel Lewis, for from $250 to $400. I forget the exact amount. Messrs. Roots & Coe were induced to do this from the fact that I proposed to make these hams net equal to 7½ cents in pickle, after refunding to Messrs. Roots & Coe pay for the materials furnished by them.

[Above answer objected to by plt'ffs' att'y.]

Questions by Pl'ffs' Att'y.

Question. When you said Mr. Roots went out to see your brother, who were present during the interview with him?

Answer. I think there was no one present at the interview except Mr. Roots, my brother, and myself.

Question. Where was that interview? at what time?

Answer. That interview was at my sister's, near the corner of Orchard and Sycamore Streets, Cincinnati. It was about the first day of April, 1854, within one or two days after that date.

Question. Where was the agreement made, which you say in answer to the last question by defend'ts' counsel, was entered into by yourself and plaintiffs? who were present?

Answer. I think that agreement must have been made in my

office. I don't recollect who was present, but I think Mr. Townsend must have been present, as he knew the conditions of that agreement, and when he went to settle with Messrs. Roots & Coe the note that I have spoken of, indorsed by my brother, made a part of the assets to pay this account with.

HENRY LEWIS.

Deposition of Henry Nye, witness for Plaintiffs.

Henry Nye, of lawful age, being produced, sworn and examined on part of the plaintiffs, deposes and says, as follows:—

1st question. State your residence and your business, and how long you have been engaged in such business.

Answer. My residence is in Cincinnati; my business pork packing and commission. I have been engaged in that business some nine years. During each of these years I have been engaged in ham curing, which is part of said business.

2d. question. What is the shrinkage of sugar-cured hams in pickle, during progress of further cure, and until canvassed, yellow-washed, and ready for market? State, if you please, the shrinkage in pounds; and, upon the supposition that the smoking, canvassing, &c., are to be done in thirty (30) days.

Answer. The shrinkage of those hams would be about twelve (12) per cent.; about twelve pounds in every hundred pounds of the green weight. The weather makes some difference. It might vary. It would be from eleven (11) to twelve (12) per cent. The bagging, papering, and yellow-washing would add one and a quarter per cent. on the cured weight; that is, one pound and a quarter to every hundred.

3d question. State what the shrinkage would be if this smoking, canvassing, &c., was not completed in less than sixty days, say from and after the 4th day of April.

Answer. If they laid in pickle, it would make no material difference.

HENRY NYE.

(The defendants' counsel declined to cross-examine.)

Deposition of Geo. W. Trowbridge, witness for Plaintiffs.

And George W. Trowbridge, of lawful age, being produced, sworn and examined on part of the plaintiffs, deposeth and saith as follows, in answer to plaintiffs' questions:—

1st question. State your residence and occupation; with whom have you been engaged in business, and for what length of time has such business been conducted?

Answer. Residence in Cincinnati; occupation is that of pork packer, commission-merchant, and curer of extra sugar-cured hams. I am a member of the firm of James Beaty & Co. Our business

has been conducted for about two years. I have had a general knowledge of the business, more or less, for eight years.

2d question. What is the shrinkage of sugar-cured hams in pickle during the progress of further cure, the same to be smoked, canvassed, and yellow-washed, and ready for market? State, if you please, the shrinkage in pounds, on the supposition that the gross weight is taken on the fourth day of April, and that the smoking, canvassing, &c., is to be done in thirty days from that date.

Answer. If a corn-fed article, the shrinkage would be from ten and a half (10½) to eleven (11) per cent., if canvassed as soon as smoked, and weighed as soon as the wash is sufficiently dry.

GEO. W. TROWBRIDGE.

(Defendants' counsel declined to cross-examine.)

Deposition of John A. Shaw, Witness for Plaintiffs.

John A. Shaw, of lawful age, being produced, sworn, and examined on behalf of the plaintiffs, deposeth and saith:—

1st question. State your residence, and your business, and how long have you been engaged in such business?

Answer. My residence is in Cincinnati; am engaged in the pork packing business, and have been so engaged for the last eleven years.

2d question. What is the shrinkage of sugar-cured hams in pickle during progress of further cure, and until canvassed, yellow-washed, and ready for market? State, if you please, the shrinkage in pounds, and upon the supposition that the smoking, canvassing, &c., can be done in thirty days.

Answer. The shrinkage would be eleven per cent., including the weight of the covering.

JOHN A. SHAW.

(Defendants' counsel declined to cross-examine.)

Deposition of Thomas N. Shays, Witness for Plaintiffs.

Thomas N. Shays, of lawful age, being produced, sworn, and examined on behalf of the plaintiff, deposeth and saith as follows:—

1st question. State your residence, your business, and how long have you been engaged in such business?

Answer. I reside in Cincinnati; business is that of ham curing, and have been engaged in it eight years.

2d question. What is the shrinkage of sugar-cured hams in pickle during progress of further cure, and until canvassed, yellow-washed, and ready for market? State, if you please, the shrinkage in pounds, and upon the supposition that the smoking, canvassing, &c., can be done in thirty (30) days.

Answer. The shrinkage would be ten per cent. I know this by

an actual experiment during the past year; that is, from the time they are out of pickle, and going through smoking and canvassing and yellow-washing.

THOS. N. SHAYS.

[Defendants' counsel declined to cross-examine.]

2d Deposition of Jno. H. Aydelott, witness for Pl'tffs.

And John H. Aydelott (heretofore examined), having been recalled on the part of plaintiffs, deposeth and saith as follows:—

1st question. How were the 415 hhds. of hams, and other property advanced upon in Indianapolis by pl'tffs to Henry Lewis shipped from Indianapolis to Cincinnati? To whom were they consigned, or to whose order were they shipped or sent?

Answer. To Roots & Coe, or to their order, and to the best of my knowledge this was invariably the case.

2d question. State the weights of the hams delivered under warehouse receipt hereto attached, marked "exhibit *A*;" give the pounds of the different parcels delivered, also the pounds of the 212 tierces sold to the defendants; state, also, how you obtained these weights.

Answer. There were 84½ hhds. delivered, averaged to weigh seventy-six thousand pounds (76,000 lbs.). There were one hundred and eighty (180) tierces, weighing fifty-five thousand five hundred and sixty-one (55,561 lbs.), net weight. These 180 tierces were sold to defendants. There were three hundred (300) tierces shipped; of these I can only give what I believe to be the net weight, that is, ninety-two thousand three hundred and seven (92,307) pounds. There were two hundred and twelve (212) tierces (the lot the suit is about) sixty-seven thousand and seventy-one pounds (67,071 lbs.). I obtained the weights of the 212 tierces myself from Mr. Townsend, Mr. Lewis's bookkeeper. As to the weights of the other lots, I cannot recollect whether I got them myself direct, or through Mr. Roots from them, that is, from the books of Mr. Lewis. The 84½ hhds. delivered in pickle, I spoke of before, were averaged by the weight in the warehouse receipts at 900 pounds net each.

3d question. Have you the gross weights of the 300 tierces of hams shipped to Adams & Buckingham, New York? If so, what were they? Look at papers now shown you, marked exhibit "*E* 1," and exhibit "*E* 2," and state what they are, and what you know in regard to them.

Answer. I have the gross weights of two hundred (200) of the three hundred (300), by the bills of lading, one hundred shipped the sixth (6th) June, 1854, weighing thirty-four thousand two hundred and seventy pounds (34,270 lbs.); also, one hundred tierces shipped the 19th June, 1854, weighing thirty-four thousand two hundred and sixty-nine (34,269) pounds. These papers, marked "*E* 1" and "*E* 2," are the original bills lading of the tierces I have referred to—part of the (300) shipped to Adams & Buckingham, New York.

They are in my handwriting, and signed by freight agent and clerk of Little Miami railroad. I believe that the weights were obtained from Henry Lewis's bookkeeper or clerk. My reason for so believing is that, from the best of my knowledge and belief, he did all the writing.

4th question. State at what time, on the morning of the 24th June, 1854, you was first at the business place of Henry Lewis, and what you was there for; also, state whether or not you saw Mr. McCullough there at that time; whether or not you was introduced to him, and if you was, by whom?

Answer. I presume it was on the 24th June; it was near that date that I was at Mr. Lewis's office, between the hours of 8 and 10 o'clock in the morning, to the best of my recollection. I was there for the purpose of obtaining the weights of the 212 tierces of hams. I saw Mr. McCullough there at that time. I was not introduced to him. He was merely pointed out as being Mr. McCullough. He was pointed out by Mr. Townsend, as I asked him if Mr. McCullough was there.

5th question. Where was Mr. Townsend at the time you asked him if Mr. McCullough was there? Where was Mr. McCullough at the same time? If you spoke with Mr. McCullough while there, state all that was said by him and by you. Where were you and Mr. McCullough during this conversation, and where was Mr. Townsend?

Answer. Mr. Townsend was behind a small counter that runs across the office; this counter runs across the south end of the office. I stood front of this counter. Mr. McCullough was sitting at a window on the outside of the west end of the same counter, probably six or eight feet (6 or 8) feet from Mr. Townsend. I spoke to Mr. McCullough. I went up to him, leaving Mr. Townsend where he was standing. I spoke in a very low tone, not wishing anybody to hear what I said except himself, it being intended only for his own ear. I told him Mr. Roots requested me to say to him (Mr. McCullough) that he wished the money for the 212 tierces of hams that day. I can't recollect the precise words of his answer, but it was to the effect that it would be all right, that he should have the money that day. There was no other talk between us, and I went away with that understanding, and carried that answer back to Mr. Roots. During this conversation, Mr. Townsend remained where he had been.

6th question. State what Mr. Townsend said to Mr. McCullough, if anything, while you was in the office, or anything he said to you in the hearing of Mr. McCullough. Please state anything he may have said in regard to the payment for the 212 tierces.

Answer. Mr. Townsend did not say anything to Mr. McCullough while I was in the office. I asked Mr. Townsend for the weights of the 212 tierces, and he gave them to me. I then asked him if Mr. McCullough was there, and he pointed him out. He did not say anything else while I was in the office, either to me or to Mr. McCullough.

7th question. Where else, if anywhere, did you that day or any other day see Mr. McCullough and Mr. Townsend together? When did you next see Mr. McCullough, and for what? When and where did you next see Mr. Townsend, and under what circumstances did you come to meet Mr. Townsend, if you did meet him? State particularly.

Answer. I did not see them together at any time on that day, nor have I any recollection of ever having seen them together before or since. I saw Mr. McCullough, say about an hour afterwards—that is, about an hour or hour and a half after I left the office—at the foot of the steps leading to Mr. Lewis's office—that is, on the pavement at the foot of the outside steps which lead to the floor on which Mr. Lewis had his office, above alluded to. When I had left the office, as I state in my previous answer, I went into Rowe & Co.'s banking office on Third Street, between Main and Walnut, lower side, for the purpose of making deposit, and there I saw Mr. Roots and Mr. Townsend; and while there, at request of Mr. Roots, I made out a bill against McCullough & Culbertson for the 212 tierces of hams. I left Mr. Roots and Mr. Townsend together, and returned immediately to Mr. Lewis's office, and there met Mr. McCullough at the foot of the steps, as I have stated. My object was to present the bill to him which I had first made out, and I did present that bill. The next time I saw Mr. Townsend was on my way back, immediately after presenting said bill. I met him on Sycamore Street, about three squares from Mr. Lewis's office, down towards Third Street. He was going towards Lewis's office as I was going from it. This was probably fifteen minutes after leaving Mr. Townsend, at Rowe & Co.'s office on Third Street.

8th question. State whether at any time you met Mr. Townsend on the pavement in front of the office of Mr. Lewis, in regard to the sale of and settlement for the 212 tierces. If so, when was it, and who were present? What was said, if anything, by him or them?

Answer. I never met Mr. Townsend on the pavement in regard to this matter, either alone or with any other person.

9th question. State all that was said by yourself and Mr. McCullough when you presented the bill, as you say you did in answer to question 7th above?

Answer. I handed Mr. McCullough the bill, and demanded payment; that was the instructions I had received from Mr. Roots. Mr. McCullough said he would see Mr. Roots on 'change, and would pay or settle the bill there. I don't know which word he used, "pay" or "settle." He said he was getting a discount at bank. My understanding was that he would pay the bill on 'change. I went away with that understanding, and so reported to Mr. Roots. There was no other conversation between us.

10th question. When did you first hear anything of an order by Henry Lewis to Roots & Coe upon McCullough & Culbertson, for the proceeds of the 212 tierces of hams?

Answer. It was after Mr. Roots returned from 'change (the Merchants' Exchange), probably half-past one or two o'clock on the afternoon of the same day.

11th question. If at any time anything was said by Mr. Townsend as to the sale of the 212 tierces, and the payment for same by defendants, in your presence, when was it, and where was it, and what was said? If at any time he might have made remarks on this subject to Mr. McCullough in your presence, and under circumstances when you would not have been certain to have heard any and all the remarks made, when was it, and where was it?

Answer. Mr. Townsend never said anything in my presence as to the sale of or payment for the 212 tierces, except that he gave me the weights thereof, as I have before stated. He never did make any remarks, nor could he have done so, in my presence, at any time, to Mr. McCullough, without my hearing them.

Cross-examined.

And said deponent (Aydelott), upon cross-examination by defendants' counsel, deposes and says as follows:—

1st cross-question. To whom were the advances of Adams & Buckingham made—to Henry Lewis, or D. Macey & Co., or whom? State whether the transactions between Adams & Buckingham, or Roots & Coe with D. Macey & Co., involved anything more than the giving and receiving of the warehouse receipts. State whether the warehouse receipts of D. Macey & Co. have been surrendered.

Answer. The advances of Adams & Buckingham were made to Henry Lewis. I have no account on my books with D. Macey & Co. My account was only with Henry Lewis. I cannot speak positively as to the surrender of the warehouse receipts of D. Macey & Co., but I don't think they have been surrendered. I think they have never been inquired for by D. Macey & Co. My impression is that they were sent east to Adams & Buckingham.

2d cross-question. State by whom the 415 hhds. hams were received on their arrival at Cincinnati; into whose actual possession were they delivered by the carrier bringing them from Indianapolis?

Answer. By Roots & Coe's directions they were sent to Henry Lewis's warehouse from the steamboat. I am under the impression that they were taken by Lewis's draymen.

3d cross-question. State whether you are positive as to having any conversation with Mr. McCullough about the hams sold to defendants except the one conversation which took place on the pavement at the foot of the steps leading into Henry Lewis's pork-house.

Answer. I am positive that I did not have any other conversation but the one on the side-walk with Mr. McCullough, except when I spoke to him when I first went to the office that morning. I would not call that a conversation.

4th cross-question. Have you any positive recollection of Mr.

McCullough's saying anything when you first saw him in the warehouse as to the payment for the 212 tierces? Was not your sole errand at the pork-house to obtain the weights of the tierces?

Answer. He did not say anything further, than when I told him that Mr. Roots wanted the money for the 212 tierces that day, he said it was all right, or words to that effect. My errand was to see Mr. McCullough, if I could, besides getting the weights.

5th cross-question. Are you positive that Mr. Townsend was not present at your conversation with Mr. McCullough, which took place on the pavement at the steps?

Answer. I am very positive.

6th cross-question. When did you first see Mr. McCullough to know him; and do you still state that Mr. McCullough, who is now here present, was seen or spoken to by you in the pork-house, as you have heretofore stated?

Answer. If I recollect rightly, Mr. McCullough was first pointed out to me at the pork-house, corner of Ninth and Sycamore streets, about a square and a half from Lewis's pork-house. This was at a time previous to this present transaction. I did not take notice enough of him then to know him again. I do state that I spoke to Mr. McCullough in the pork-house on the same day, previous to speaking to him on the side-walk at the foot of the steps.

7th cross-question. In your conversation with Mr. McCullough, did you not, for Roots & Coe, ask that the payment for the 212 tierces should be made before change; and did not Mr. McCullough reply to you, that he did not know Roots & Coe in the transaction; and did not Mr. Townsend then say that he was going down to have a settlement with Roots & Coe; and that he would, for Henry Lewis, give Roots & Coe an order on the defendants for the money?

Answer. I presented the bill, and asked for payment of it, as I have stated before. Mr. McCullough made no such reply to me. Mr. Townsend was not present, and did not so state at any time to me.

8th cross-question. Do you not remember that you and Mr. Townsend were standing on the platform at the head of the steps, and Mr. McCullough was coming up Sycamore Street, when told Townsend that you did not know Mr. McCullough, and that he introduced you, and a conversation then took place on the pavement?

Answer. I know that Mr. Townsend and myself were not standing there; and I know that Mr. McCullough was not coming up Sycamore Street; and I know that he did not introduce me to Mr. McCullough. I have never had an introduction to Mr. McCullough. No conversation ever took place between Mr. McCullough and me under the circumstances implied in the question.

9th cross-question. When did have a conversation with Mr. McCullough on the pavement at the steps, whom did you leave in the pork-house when you came out and met Mr. McCullough?

Answer. I did not go into the pork-house at the time of having

the conversation on the pavement, I had just come up Sycamore street and met Mr. McCullough at the steps, he was just coming out of the pork-house down the steps.

10th cross-question. Was that before or after you and Townsend went down the street together?

Answer. Mr. Townsend and I did not go down the street together.

11th cross-question. Did not you and Townsend go down the street together, and meet Mr. Roots on the corner of 3d and Walnut streets?

Answer. We did not.

12th cross-question. Who were present in the pork-house when you met Mr. McCullough there?

Answer. The first time I went there that morning, Mr. Townsend was in the office if I recollect right. Mr. Lewis was there and some gentlemen besides; I don't remember who they were, I have the impression that Mr. Lewis was there, but will not be positive:—

JOHN H. AYDELOTT.

2d Deposition of E. B. Townsend for Defendants.

And Edmund B. Townsend (having been heretofore examined on the part of the defendants), being now called and examined, deposes and says as follows, in answer to the interrogatories of defendants' counsel:—

1st question. State all that took place in your presence between John H. Aydelott and the defendant John McCullough concerning the purchase of the 212 tierces of hams, now in controversy; give all the facts as far as you can recollect.

(Pl'ffs' Counsel objects to this question.)

Answer. When I introduced Mr. Aydelott to Mr. McCullough, he, Mr. Aydelott, said to Mr. McCullough, he had come up to collect the money for the hams. Mr. McCullough remarked that he would be ready to pay on change. Mr. Aydelott urged the payment then. Mr. McCullough remarked that he had not fully consummated his arrangements, but than on change he would be ready. Mr. Aydelott still urged the payment for Roots & Coe. Mr. McCullough remarked that he should pay on change when he received the order, and it was settled who was to have the money, and told me that he would not pay it without, as he did not know Roots & Coe in the transaction.

2d question. State where this conversation occurred, and whether Mr. Aydelott was present when Mr. McCullough made the last remark.

Answer. It occurred at the foot of the steps at the pork-house of Henry Lewis, and in presence of Mr. Aydelott, and think he was near enough to have heard the last remark.

3d question. State whether any other interview had taken place on that day between said parties, and state whether Mr. McCullough

had been at the pork-house previously on said day; state the circumstances of your introducing them.

(Objected to by pl'tffs' counsel.)

Answer. There had no other interview taken place between the parties that I know of, but presume there had not, as Mr. Aydelott said that he was not acquainted with Mr. McCullough and would not know him if he should see him; this conversation took place in the pork-house. He then went out on the platform in front of the pork-house, and I pointed Mr. McCullough out to him as he was coming up Sycamore Street, about a square off; we waited until he, Mr. McCullough, came up, and I introduced him to Mr. McCullough. I had not seen Mr. McCullough in the pork-house on that morning previous to the introduction.

4th question. State what became of the parties after the conversation ended; state whether Mr. Aydelott had been at the pork-house previously on the said day, and also whether he was there subsequently.

Answer. We separated at the foot of the steps. Mr. McCullough went in the house, and Mr. Aydelott and myself went down the street together, with the intention of going to Roots & Coe's office, and we remained together until we met Roots on the corner of Third and Walnut Streets, where Mr. Roots asked him if he had given Mr. McCullough the bill for the hams. Mr. Aydelott said he did not. Mr. Roots then ordered him to go and give him a bill; he left and presume he returned to the pork-house, as I met him on the corner of Sycamore and Wall Streets on his way back down town, and have no knowledge of Mr. Aydelott's having been at the pork-house on that day previously to the time of introducing him to Mr. McCullough on the pavement.

5th question. State the facts connected with the sale of the 212 tierces of hams to the defendants, who made the sale, and what part, if any, had the plt'ffs in selling said property?

Answer. The first part of the above question is answered in my answer to the first question in former examination. Mr. Roots was present at the time of the sale, and remarked that when the hams were weighed they would give him a bill, but Mr. Lewis said no, he would make Mr. McCullough a bill, to which Mr. Roots did not object.

(Plt'ffs' att'y objects to above question and answer.)

6th question. State what disposition was made of the whole of the hams contained in the 415 hhds. heretofore mentioned; state what portion, if any, besides the 212 tierces sold to the defendants, were appropriated to any purpose except to repay the advances made by Roots & Coe.

(Plt'ffs' att'y objects to above question.)

Answer. Eighty-four and a half hhds. were paid for by Henry Lewis to Roots & Coe, while in pickle; one hundred and eight tierces were sold to J. McCullough, who paid over the proceeds to Roots &

Coe. Three hundred tierces were shipped to Adams & Buckingham by Roots & Coe, one tierce was sold for cash, five hundred sweet hams to A. Lewis, and about five hundred sour hams we sold to A. Lewis through myself, which together with the and hs and the 500 sweet hams were to be settled for if Mr. Roots had gone into the settlement as requested. Those, as far as I know, comprise the 415 hhds. hams received from Indianapolis.

7th question. Explain, if it is within your knowledge, why the number of pounds of the hams specified in your last answer is less than the number of pounds estimated for the 415 hhds., according to Samuel Lewis's warehouse receipt, marked exhibit *A*.

Answer. I stated in my answer to question No. 37 in former examination, that they were not particular in weighing the hams into the hhds.; the weights in the warehouse receipts were estimated at 900 lbs to each hhd., but not weighed by H. Lewis. I am not familiar enough with the shrinkage of meat to give an answer correctly.

9th question. State whether Roots & Coe, or Adams & Buckingham have rendered H. Lewis accounts of sales for the last year's business, and whether they have been requested to do so.

(Above question objected to by plt'ffs' counsel.)

Answer. Messrs. Buckingham have not rendered H. Lewis an account of sales of his last year's business, with the exception of 500 bbls. lard, and positively refuse to do so, after being requested to render their ac. sales and ac. current. Roots & Coe rendered an ac. sales of what business was done with them individually, though it had no connection with the transactions with Adams & Buckingham, or Graham & Buckingham, or with Roots & Coe, as their agents.

10th question. What was the business between Henry Lewis and Roots & Coe individually, and had it any connection with the other matters referred to in any part of the testimony given by you in this case?

Answer. They made Henry Lewis an advance on some shoulders in bulk which they smoked and sold for him, and had no connection with the business now in controversy.

11th question. When you went to make a settlement with Roots & Coe, and to take up Samuel Lewis's former warehouse receipts, what was the amount in controversy as to said weights; how much more did Mr. Roots claim to be due upon them than was admitted by H. Lewis; and how far were you prepared with funds to make payment on that day upon said receipts?

Answer. When I went to settle with Roots & Coe, the amount in controversy on Sam'l Lewis's former warehouse receipts was the amount of the bill for the 212 tierces and the 500 sweet and 521 sour hams, which we were ready to settle by giving them an order on McCullough for bill for the 212 tierces, and the balance were prepared with funds in hand to pay. As for the amount claimed by Mr. Roots as being due on them, do not know as I never heard him say.

12th question. You have stated in your answer to the first ques-

tion that Mr. McCullough remarked that he should pay on change when he received the order, and it was settled who was to have the money; please state what conversation, if any there was, as to who should give the order for the money, and how the money was to be paid.

Answer. The reason why I told Mr. McCullough not to pay the money until he received an order from me, was that we wished to make the settlement with Roots & Coe, and take up Samuel Lewis's former receipts, and did not wish the money paid until that was done, as Mr. S. Lewis wished his former receipts taken up when the hams were delivered—and Mr. Henry Lewis had so often told Mr. McCullough that he had made the sale for that purpose, and that the money was going to Roots & Coe. We did not know but he might pay it to them before we had taken up the receipts. There was no controversy who was to give the order, or who was to have the money, for the money was going to Roots & Coe.

(Pl'ffs' att'y objects to what Mr. Lewis had so often told witness, and to answer generally.)

13th question. State who is the Samuel Lewis for whom you are clerk, as stated by you in your former examination; state whether you have any interest in the event of this suit; state what connection exists between John H. Aydelott and Roots & Coe, and how long it has existed.

Answer. The Samuel Lewis for whom I am clerk, is the son of Henry Lewis, and nephew of Sam'l Lewis, dec'd. I have no interest in the event of this suit. The John H. Aydelott who gave in his deposition in this cause, is a partner in the house of Roots & Coe, which connection has been in existence since August 1st, '54.

(The pl'ffs' att'y objects to so much of answers given in re-examination of E. B. Townsend, as do not rebut new matter in re-examination of John H. Aydelott.)

Cross-examined by Pl'ffs' Counsel.

1st cross-question. When and where did you first see Aydelott on the 24th of June?

Answer. In Henry Lewis's pork-house, between the hours of seven and ten o'clock in the morning.

2d cross-question. Are you not able to state the hour more precisely?

Answer. I am not, as I did not make a note of the precise time.

3d cross-question. Did you make a note of any of the things done or said by you, Aydelott, or McCullough, on that day, and as to which you have testified? If so, where is it?

Answer. I made no note at that time of anything that was said by either Aydelott or McCullough. All the note I ever made is my testimony in the case.

4th cross-question. What request, if any, did Aydelott make of you?

Answer. He requested me to inform him where Mr. McCullough was, that he wished to see him for the purpose of presenting him a bill for the 212 tierces of hams, and to get the money for them.

5th cross-question. Did he not ask you for the weights 212 tierces? Did you not give them?

Answer. I am not positive, but think he did, and I may have given them.

6th cross-question. When were they weighed out?

Answer. Cannot give the precise time, as I did not weigh them.

7th cross-question. Do you not know when and from whom Aydelott got these weights? Do you not know you gave them to him, and that his business to the pork-house that morning was mainly to get them?

Answer. I stated in my former answer that I may have given him the weights, am not certain that I did or did not; and am of opinion that his business was not merely to get the weights of the hams, as he wished Mr. McCullough to pay him the bill.

8th cross-question. But, had he any bill with him, or made out at that time?

Answer. Do not know that he had.

9th cross-question. Do you not believe and know that he had not?

Answer. Do not.

10th cross-question. But, do you not still think that he asked you for the weights, as you have stated in answer to cross-interrogatory number five?

Answer. He may have asked me for the weights or he may not, am not entirely certain either way.

11th cross-question. You have stated some things as said by you, by Aydelott, and by McCullough, on the morning of the 24th June; please state all that was said by each, and in the order, and, as far as possible, in the words that it all was said.

Answer. Cannot state the exact words that each individual said, but the substance is as stated in my answer to Question No. 1, in examination, with the exception of the remark, "when it was settled who was to have the money?" The remark was, "when he got the order he should be ready to pay the bill on change."

12th cross-question. I have not asked merely for what was said by each of you, but for the order in which it was said, and by each of you; please state.

Answer. When I introduced Mr. Aydelott to Mr. McCullough, at the foot of the steps, I asked Mr. McCullough when he would be ready to pay us for the hams; he said he would be ready on change. I told him I was going down to settle with Roots & Coe, and would give them an order on him for the money. I think Mr. Aydelott remarked, that Mr. Roots wished it before that time. Mr. McCullough remarked, that he *he* had not completed his arrangement, and thought it was pretty prompt pay to get the money on change. Mr.

Aydelott still urged the payment of the bill, when Mr. McCullough remarked, that when we settled, and he got the order, he would pay the money on change; that he did not know Roots & Coe in the transaction; this was the substance if not the exact words, and, I think, in the order in which occurred.

13th cross-question. Was there anything else said by either of you? if so, what was it, and in what part of the conversation was it said? State fully.

Answer. Do not now recollect that there was anything else said, except as we separated I told Mr. McCullough to go into the house, and Mr. Prentiss would give him a bill for the hams.

14th cross-question. You say Mr. Aydelott still urged the payment of the bill, what language did he use? I refer to your answer to the last question but one.

Answer. Do not recollect the exact words, but think he said Mr. Roots wanted the money before change.

15th cross-question. What reply did Mr. McCullough make? state his words as nearly as you can.

Answer. As near as I can recollect Mr. McCullough remarked, directing his conversation to me, "when you settle and I get the order, will be ready to pay the money on change," as I do not know Roots & Coe in the transaction.

16th cross-question. Did Mr. Aydelott further urge the payment of the bill? if so, what did he say?

Answer. Think he did not after Mr. McCullough made that remark.

17th cross-question. Had he urged the payment previously in the conversation? if so, what did he say?

Answer. He had; do not recollect his exact words, but think he said "Mr. Roots wanted the money before change.

18th cross-question. Is that all he said previously? if not, what else did he say?

Answer. He said to Mr. McCullough that Mr. Roots had sent him up to get the money for the bill of hams, or words to that effect.

19th cross-question. What did you mean by saying, in answer to first question in chief in this re-examination, that "Mr. Aydelott still urged the payment for Roots & Coe?"

Answer. I meant that he still said that Mr. Roots wanted the money before change, and, as he was in the employ of Roots & Coe, believed that he wanted the payment for them.

20th cross-question. In answer to my 23d cross-interrogatory, on your previous examination, which was, "what did he (Mr. Aydelott) say to McCullough, or in his presence?" you stated, "he said he came up to collect the bill for the hams, or words to that effect." Why did you not then state, also, some of the many other things which, on this re-examination, you have testified to as having been said by Mr. Aydelott?

Answer. Because I did not consider them so very important, and they were implied in the phrase "or words to that effect."

21st cross-question. What was the first thing said by either of the parties upon your introduction of Mr. Aydelott to Mr. McCullough, and by whom?

Answer. I think the first thing said upon my introducing them, was the usual salutation on such occasions.

22d question. Well, what followed that?

Answer. I asked Mr. McCullough when he would be ready to pay us for the hams; he remarked that he would be ready on change. I think Mr. Aydelott then said Mr. Roots had sent him up to get the money for the bill of hams, or words to that effect.

23d cross-question. If as you have stated you introduced Mr. Aydelott to Mr. McCullough, and you knew his business, why did did you not wait until he made it known, before you inquired when he would be ready to pay you? What did you mean in your first answer by saying, "when I introduced Mr. Aydelott to Mr. McCullough, he, Mr. Aydelott, said to Mr. McCullough he had come up to collect the money for the hams?"

Answer. I had just started down to Roots & Coe for the purpose of settling with them for the hams and taking up Sam'l Lewis's former warehouse receipts, and was in a hurry to get down to their place in order to get through in time for them to have the order or money by change time. I meant just what Mr. Aydelott said.

24th cross-question. If Mr. McCullough said at the time you introduced Mr. Aydelott to him, "that he should pay on change, and when he received the order, and it was settled who was to have the money, and that he would not pay it without, and that he did not know Roots & Coe in the transaction," why did you, after meeting Mr. Roots on the corner of 3d and Walnut Streets, return and notify "Mr. McCullough not to pay any part of the bill to Roots & Coe?"

Answer. Because there had been so much said about the money going to them, that I did not know but Mr. McCullough might still be induced by Mr. Roots to pay over a part if not all the money to them; and also that there might be a formal notice in the presence of others of that fact.

25th cross-question. Who were present? where was it, and when was it that such formal notice was given?

Answer. Mr. Prentiss was present at the time, it was done in the office of the pork-house of Henry Lewis, after I returned from the interview with Mr. Roots on the corner of Third and Walnut Streets.

26th cross-question. You have stated that you told "Mr. Roots on the corner of Third and Walnut, that he" McCullough "would not pay the bill without such order, and also told Mr. Aydelott the same thing;" why did you tell Mr. Aydelott this after the same thing had been said to him by Mr. McCullough himself, and in stronger language?

Answer. Can't say that I had any particular object in telling Mr. Aydelott that Mr. McCullough would not pay the bill.

27th cross-question. You have stated you left the pork-house with Mr. Aydelott; where did you separate? When you separated, where did you go, and where did he go?

Answer. We separated on the corner of Third and Walnut Streets; I returned to the pork-house, and Mr. Aydelott went in search of Mr. McCullough, to give him the bill as Mr. Roots ordered him.

28th cross-question. Do you say you were not together at the banking house of Mr. Rowe?

Answer. I saw him at the office of Mr. Rowe, but we had separated at the corner of Third and Walnut Streets.

29th cross-question. Was not Mr. Roots in the office at the same time? Did you, Aydelott, and Roots have conversation together there?

Answer. Mr. Roots was in the office at the same time we were together there, but do not recollect that Mr. Aydelott joined in the conversation, for Mr. Roots still urged him to go and see Mr. McCullough.

30th cross-question. What was your business there?

Answer. I had no particular business in the office.

31st cross-question. Had you other duties than those of book-keeper while in the employ of Henry Lewis? If so, state what were they?

Answer. My duties were those of bookkeeper in the office, and duties out of the house appertaining to that department, but have nothing to do with the packing, cutting, or weighing.

32d cross-question. Do you know of your own knowledge as to the number of pieces and the weights of same contained in the 415 hhds., or as to their cure?

Answer. I do not.

33d cross-question. Do you know of your own knowledge the number of pieces or the weights of either of the parcels shipped of the 415 hhds.?

Answer. I do not, only as I have seen it from our shipping-book.

34th cross-question. Did you give your personal attention to the 415 hhds. while in the warehouse, so as to know, of your own knowledge, what become of any of them?

Answer. I did not give my personal attention to any part of the hams, but got my information of their disposal from our shipping-book.

35th cross-question. State whether, from your own knowledge, you could, at any time, have identified or selected these hams from other property in the warehouse; this is what I want to know.

Answer. Can't say that I could.

E. B. TOWNSEND.

Saturday, June 2d, 1855: Heretofore during the taking of these

depositions, adjournments have been had from time to time to suit the convenience, as far as possible, of the parties, attorneys, and witnesses; and said adjournments, and the causes thereof, have not been noted, at the agreement and request of all parties interested. As the taking of the depositions is very much protracted, it is deemed advisable hereafter to note both the adjournments and the causes thereof.

And then, at 6 o'clock P. M. on Saturday, all further proceedings under this commission are adjourned until Monday, June 4th, at 2 o'clock P. M., for the further examination of Henry Lewis, on the part of the said defendants.

2d Deposition of Henry Lewis, Witness for Defendants.

Tuesday, P. M., June 4th: And Henry Lewis being recalled and examined on the part of the defendants, deposes and says, in answer to the interrogatories of the defendants' counsel—

1st question. State at what time the hogs were cut, of which the 415 hhds. of hams were the product; when did the 415 hhds. arrive in Cincinnati; when were the hams contained in them sold from your pork-house; what would be the shrinkage of said hams from the time they were cut until they were shipped to Cincinnati, and what their shrinkage from the time of their arrival here until they were finally sold?

Answer. The hogs were cut in December and in January, the latter part of 1853 and the beginning of 1854. The hams laid at Indianapolis in pickle casks till the following spring, at which time they were shipped to Cincinnati. When the hams arrived here they were much out of order, many of the hogsheads were partially destitute of pickle. They were taken out of the hogsheads soon after their arrival, and hung in the smoke-house to smoke. They were hanging in the smoke-house on to the joists in the pork-house, till along in May and June, many of them till late in June. The loss of weight and shrinkage of hams depends very much upon the quality of the hogs from which they are cut. Hams cut and handled in the way that these were would probably shrink from fifteen (15) to eighteen (18) per cent. of their weight when cut from the hog.

2d question. State whether the mark on the hhds. above mentioned of 900 lbs. was intended to express the gross weight of the cask or the net weight of the hams, and whether said mark was placed on the hhds. as an estimated or as an ascertained weight.

Answer. If there was the weight "900" marked upon the heads of the hhds., it was intended to express the net weight of the hams; but the weight had not been ascertained by actual weighing, it was an estimated weight. When the weight of the hams was found to fall so far short of what they should have been, I called on Mr. McWhinney to know why it was that the hams fell so far short; he informed me that the hams were so much frozen, that the unexpe-

rienced men he had could not get nine hundred pounds in the casks, and they were packed merely by guess.

(Plaintiffs' counsel objects to so much of the above answer as the witness says he heard from McWhinney.)

3d question. State whether the marks on the casks or hhds. correspond with the warehouse receipt of Samuel Lewis, which specifies 900 lbs. as the net weight of each cask. State how it happened that the said warehouse receipt specified 900 lbs. as the net weight of each hhd.

(Plaintiffs' counsel objected generally to this question.)

Answer. I don't now recollect whether the weight of each cask was marked on it or not. The 900 pounds to each cask does correspond with Samuel Lewis's warehouse receipt; in Samuel Lewis's warehouse receipt each cask is made to contain 900 pounds of hams. It was so put there from the fact that was the estimated weight in each cask, and David Macey's warehouse receipt called for so many casks of hams weighing 900 lbs. each. The weight of the hams in the casks had not been ascertained when Samuel Lewis's warehouse receipt was given.

(Above answer objected to by pl'ffs' counsel.)

4th question. State how soon after the hhds. were received here it was ascertained that they did not contain 900 lbs. net weight each. State when, if at all, the deficiency was reported to Roots & Coe, and what, if anything, passed between you and them on that subject.

Answer. The real deficiency of the hams in weight was not ascertained until after they were all smoked and the most of them packed. When I informed Mr. Roots of the fact, he said that Mr. Macey should be held accountable for the 900 lbs. to each cask, as he had given his warehouse receipt for that amount.

5th question. State whether the hams sold by you and accounted for to Roots & Coe, and those shipped by you to Adams & Buckingham, and those sold by you to Albert Lewis, together with the 212 tierces now in controversy, embrace all the hams contained in the 415 hhds.; and if not, state what was done with the others.

Answer. The hams shipped to Messrs. Adams & Buckingham, and the hams sold to my brother and others, and the estimated value of what there was in the house at the time I proposed to settle with Messrs. Roots & Coe and take up Samuel Lewis's former warehouse receipts, embraced all the hams contained in the 415 hhds., to the best of my knowledge, excepting a few that might have been disposed of as sample hams. It is possible I might have sent a half a dozen or so to my house, to try their quality. All the hams contained in the 415 hhds., or the proceeds of them, were tendered to Messrs. Roots & Coe at the time they refused to settle and give up Samuel Lewis's warehouse receipts.

6th question. State what claim, if any, Roots & Coe, at any time prior to the sale by you of the 212 tierces above mentioned, asserted to the hams in the 415 hhds., except as holders of warehouse receipts, and as agents making advances.

Answer. They never asserted any other claim than that of holding the warehouse receipts and making advances after the 4th of April (or about the 4th April), at the date of Samuel Lewis's warehouse receipt. They did not attempt to exercise any ownership whatever. All Messrs. Roots & Coe claimed was what was equal to seven and a half (7½) cents per pound for the green hams, excepting whatever claim they may have set up when Mr. Townsend wanted to settle with them.

7th question. State whether Roots & Coe or Adams and Buckingham have made to you any report or return of sales, or acc. current of the business between you during the seasons of 1853 and 1854. State whether they have been requested by you to do so.

Answer. Messrs. Adams & Buckingham have rendered me no account sales whatever, although they have been frequently urged by me to do so. Their house in New Orleans, of which Mr. Graham was a partner, did make me returns of five hundred barrels of lard, and they have positively refused to make me any further returns. I think I shipped them during that time about 3,500 barrels of pork and 500 barrels of lard.

8th question. State whether your information as to the state of the business between yourself and Adams & Buckingham is sufficient without such returns of sales to enable you to state at this time whether, upon the transactions of the said seasons of 1853 and 1854, there is a balance of indebtedness against you, and whether said balance is small or large.

Answer. It is impossible, from my information at this time, to tell what is the state of the account between Messrs. Adams & Buckingham and myself for the years 1853 and 1854. It ought not be much, if anything, owing by me for that winter's business; but as they have refused to give me account of anything save the 500 barrels of lard, it is impossible for me to be accurate.

9th question. State whether you were or were not in your pork-house on the day when John H. Aydelott called there for the purpose of collecting the proceeds of the 212 tierces sold by you to defendants.

Answer. I think I was not there during that day; if so, it must have been very late in the evening.

(Re-examination of said Lewis closed in chief.)

Cross-examined.

And on cross-examination by pl'ffs' counsel, said witness deposes as follows, viz:—

1st cross-question. At what time were the hams receipted for in paper marked exhibit *A* taken out of the hogsheads?

Answer. I don't recollect the date at which they were taken out. They were taken out soon after they arrived, but I don't recollect even that date.

2d cross-question. Do you know at what time they were shipped from Indianapolis?

Answer. They were shipped from there some time during the month of March, I think all of them.

3d cross-question. Can't you tell how long they remained in the hhds. after 4th April, 1854, the date of the warehouse receipt? If you cannot, about how long?

Answer. I cannot state exactly, but I think they were taken out of the casks in the early part of that month.

4th cross-question. Would not the shrinkage be greater in May than in April, and still greater in June than in either? I mean of hams in any part of the progress of cure?

Answer. Very much depends upon the weather, whether it is very warm, or wet and damp, as to the extent that hams would shrink in any given time. Hams shrink more the first month they are hung up, that they do the second month, and so on they would shrink less the 3d month than the second month.

Hams will shrink more in the month of June than in April, all other things being equal.

5th cross-question. What is the skrinkage in weight of hams from the time they are cut from the hogs, say in December and January, until they are taken from the pickle, say in April?

Answer. It is impossible for me to answer that question: hams are supposed generally to hold their own in pickle; but that depends very much upon the quality of the hogs they are cut from. Where the casks have been kept full of pickle, I have known hams to increase in weight, and I have known them to lose in weight.

And here, at 6 o'clock P. M. (said plaintiffs could not, having concluded the cross-examination of said witnsss, H. Lewis), the further examination has adjourned until to-morrow afternoon at 2 o'clock.

6th cross-question. If hams shrink while in pickle, is this shrinkage a continuing process through many months while so in pickle? or how many months is it possible, whatever may be the character of the meat, for the skrinkage to continue?

Answer. That class of hams that would shrink at all in pickle, I should think would shrink, in the course of six or eight weeks, as much as they would shrink if they were kept there six months if the casks were in the mean time kept full of good pickle.

7th cross-question. Do you know, of your own personal knowledge, as to the putting the hams into the 415 hhds.? Do you personally know what weights, if any, were marked upon the hhds.? If you have such personal knowledge, do you not know that the hams were weighed into each of 415 hhds.?

Answer. I know of my personal knowledge of 415 hhds. of hams being received by me of David Macey & Co., of Indianapolis. Whether all the hams were put into these hhds. I have no knowledge. I have no personal knowledge as to the weights upon any of the hhds.

8th cross-question. Were you in Indianapolis when the hams were put into the hhds.? Did you see any part of them cut or put in pickle?

Answer. My present impression is that I was in Indianapolis while some of the hams were being cut, but I have no recollection of seeing any of them packed in the hhds. I cannot be positive that I saw any of the hams cut, but it is my impression that I saw some of them cut.

9th cross-question. You have said the weight of the 415 hhds. "had not not been ascertained by actual weighing," and that "it was an estimated weight." If you know anything of this excepting from hearsay, say what it is, and how you know it.

Answer. I know nothing of that excepting from hearsay, except that at the time of opening some of the hhds. I thought they were not as full as they ought to be to contain 900 pounds of hams, and the final result, when smoked out, showed that there could not have been 900 pounds in each cask.

10th cross-question. Are you, as a pork packer, in the habit of putting estimated weights on packages, and so that they will seem to parties with whom you do business, to be net weights?

Answer. If my recollection serves me right, I think that has never been my practice. It is something no honest man would be guilty of.

11th cross-question. When you gave to pl'tffs your brother Samuel's warehouse receipt, did you say anything to him about the 415 hhds. containing estimated weights?

Answer. I think that none of the hams were taken from the casks at that time. I did not know the deficiency of the weight.

12th cross-question. What do you mean by saying that the hams contained in the 415 hhds., or the proceeds of them, were tendered to Messrs. Roots & Coe? Do you mean to say that any tender was made?

Answer. I mean to say as I have heretofore said in some of my previous answers, that when Mr. Townsend went down to settle with Messrs. Roots & Coe, that he took with him the authority from me to draw on Messrs. M'Cullough & Culbertson for the value of 212 tierces of hams. He took with him I think some money that I had received from Albert Lewis for hams, and there was still remaining in the warehouse from 4 to 6 hundred hams slightly damaged—of these he took the value in money, and that, with the proceeds of hams I had before that time paid to Messrs. Roots & Coe, made the entire proceeds of 415 casks of hams. These were tendered to Messrs. Roots & Coe by Mr. Townsend.

13th cross-question. Have you any personal knowledge of what Townsend took to the pl'tffs, or that he took anything, or of anything said or done by him or them when they met?

Answer. The knowledge I have on that subject was the amount of funds I placed in Mr. Townsend's hands, and what Mr. Townsend and Mr. Roots have both told me since.

14th cross-question. When did you place these funds in the hands of Mr. Townsend? What were they, and for what amount?

Answer. I had been some days preparing for this settlement with Messrs. Roots & Coe, and the funds were placed in the hands of Mr. Townsend on the evening previous to the day on which he went down to make the settlement. It was all in money excepting the authority he had to draw on Messrs. M'Cullough & Culbertson. I do not recollect the exact amount. But he had enough, according to our estimate, to entitle him to the former warehouse receipts of Samuel Lewis.

15th cross-question. I have asked this question before, and I now desire you to state, if you have no means of giving the exact sum, the amount as nearly as you can?

Answer. I cannot recollect the exact sum that was thought necessary and provided for that settlement; but my present impression is, that the amount tendered on that day to Messrs. Roots & Coe, added to the estimate placed upon the barrel pork shipped to Messrs. Roots & Coe, was from eleven and a half to twelve and a half dollars per barrel, was sufficient to settle all the advances that Messrs. Roots & Coe had made for that season's business with the exception of from five to seven hundred dollars that I should have still owed them.

16th cross-question. State what this shipment of barrel pork to Roots & Coe was. How much was there of it? upon what terms was it shipped to them?

Answer. The shipment of barrel pork to Roots & Coe was a parcel of mess and clear pork. I think a little over 3000 barrels were shipped during that winter from Indianapolis. It was shipped to Messrs. Adams & Buckingham of New York, for sale on my account. They were entitled to retain one-half of the profits on said shipment of pork over and above the net costs of the same, as a credit on my supposed indebtedness to them.

17th cross-question. Had any account sales of this pork been received on the 24th June? What amount had been advanced to you on this pork?

Answer. I have no recollection of any sales of that pork having been returned to me up to that time. I don't now recollect the amount advanced on the pork. The several warehouse receipts will show the original advances. But previous to the first of April of that season, in making up our figures for a settlement, I think the estimated value of the pork made by Messrs. Roots & Coe and myself was from eleven and a half to twelve and a half dollars for the several qualities.

18th cross-question. Do I understand you to say in answer to question fifteen, that you gave Townsend to pay pl'tffs 500 to 700 dollars in money? If so, was it in bank notes? Where was it given to him?

Answer. Mr. Townsend either had it in money in the shape of bank notes, or a check on some bank that I was doing business with.

My impression is that it must have been given to him in my office. I am in the habit sometimes of leaving my checks signed in blank.

19th cross-question. What data did you have in getting at this amount of 500 to 700 dollars? what accounts had you before you? where are they? will you be kind enough to produce them?

Answer. I state that from my recollection of the transaction at the time, Messrs. Roots & Coe have had several conversations since that effort to settle, they have always spoke of the difference between us as coming within that range, with the exception probably of one conversation had since the depositions began to be taken.

20th cross-question. Do you mean to say that Roots & Coe did at any time previous to the taking of these depositions, say that their claim was but 500 to 700 dollars? Did they ever say that there was no more than 500 to 700 dollars difference between you? if so, where, when, and who were present?

Answer. I mean to say that I have had one or two conversations at least with Mr. Roots previous to the commencement of these depositions, in which we mutually regretted that the settlement had not been made, as the amount we differed on at that time was so small, and that amount I am very sure came within the range of from five to seven hundred dollars. When I allude in my several answers to the 500 or 700 dollars, I speak of it as being the difference at the time of that proposed settlement. Since then I have had conversation with Mr. Roots, in which he claimed more. Mr. Roots said to me more than once in our conversation that it would only have taken the amount above named to have made that settlement, and have taken up the former warehouse receipts of Samuel Lewis. I may be mistaken in the exact amount, but my impression is, it was within that range. I do not recollect the place except in one instance, which was in Third Street, in Cincinnati, near Main Street. It was some time previous to commencing these depositions, and no one else was present.

21st cross-question. Do I understand you to say that in addition to the amount you say you offered through Mr. Townsend, that the pl'tffs claimed some five to seven hundred dollars? Do you say Mr. Roots mentioned any sum to you in addition to what you say you had offered, as their claim? if so, what language did he use? State the whole conversation.

Answer. I mean to be understood to say, that owing to the falling short of the weight of the hams, they did not produce money enough to pay Mr. Roots what he claimed to be due him, before I had a right to call on him for Samuel Lewis's former warehouse receipts, say from five to seven hundred dollars. I claimed that he only had a right to call on me to entitle me to the warehouse receipts for what money the hams produced, which amount was tendered him by Mr. Townsend. I say that Mr. Roots and myself have had conversations, but the exact language used I cannot undertake to repeat at this late day. I have no recollection of it.

22d cross-question. Do you know that Townsend offered to pay Roots & Coe any moneys, or that he mentioned any sum that he had to pay them? I inquire for what you know personally. Do you not know no sum was offered them by Townsend, and that there was never a word said by him to them of his having any money to pay them?

Answer. I do know that there was a sum of money offered to Messrs. Roots & Coe by Mr. Townsend, and I do not know that Mr. Townsend did not offer them any money, or that there was no sum offered them; my own knowledge of this is that I furnished Mr. Townsend the money myself, and Mr. Townsend and Mr. Roots have since both told me that the money was offered them.

(Pl'tffs' att'y objects to what witness says Mr. T. told him.)

23d cross-question. Can you tell how it is that Mr. Townsend in his deposition has not stated that he offered any money to Mr. Roots?

Answer. I do not know that Mr. Townsend has not stated so in his deposition.

24th cross-question. Have you stated all you know of your own knowledge of what you have again and again spoken of as a tender?

Answer. I intended to give in my previous answers my whole knowledge on that subject.

25th cross-question. What do you now owe Roots & Coe? state the amount—I inquire as to the business of the season of 1853 and 1854, and on the Adams & Buckingham account.

Answer. It is impossible for me to tell what I do owe Messrs. Adams & Buckingham for that year's business, as I have frequently called on them for the sales of my property; they positively refused to give me any account. They have given me sales of only a very small portion of that year's shipment.

26th question. What reason did they give for such refusal? Was it by letter? If so, will you not be kind enough to produce it?

Answer. I think in their last letter, they said they would not render me any further sales until I had placed in their hands the proceeds of the last 212 tierces of hams that I sold to Messrs. McCullough & Culbertson of Baltimore. I think that is the language of the letter, but I speak from recollection only, and cannot be positive. I think I have that letter in my possession, and can produce it.

27th cross-question. Do you mean to say that letter speaks of the 212 tierces as sold by you?

Answer. I have stated in my last answer that I could not give the exact words of that letter. But it certainly alluded to the proceeds of the 212 tierces of hams.

Re-examined by Defend'ts' Counsel.

And on re-examination by defendants' counsel, said witness deposes further and says:—

1st question. Explain what receipts you refer to as "Samuel Lewis's former warehouse receipts." And explain also, what relation, if any, there was between the balance of "five or seven dollars mentioned by you in this deposition, and any of Samuel Lewis's warehouse receipts.

Answer. When I speak of Samuel Lewis's former warehouse receipts, I speak of the receipts for 2,500 barrels of pork, 400 barrels of lard, 200,000 pounds of meat from the block laying in my warehouse in Cincinnati—that is, all his warehouse receipts given prior to the one given for the 415 hhds. of hams. The from five to seven hundred dollars, so often alluded to by me in this deposition, had nothing to do with any of Samuel Lewis's warehouse receipts. It was a sum of money that I owed to Messrs. Roots & Coe.

2d question. In your answer to the second question asked you upon re-examination in your first deposition you have stated "about the first of April of that spring, 1854, Mr. Roots visited with me my brother, and knew that he was in very feeble health, and at that interview my brother proposed to pay Mr. Roots all the money due him on the warehouse receipts he then held of my brother's:" state what preparation, if any, had been made at that time to make payment as above mentioned, and state any facts within your knowledge showing such preparation and readiness at that time.

Answer. I had prepared funds and placed them in my brother's hands; amongst these funds was a certificate of deposit in the Trust Company for over twenty thousand dollars ($20,000), sufficient to pay Mr. Roots all his advances up to that time, together with the full commissions on the then market price of the property, and all charges Mr. Roots had against the same. My brother told Mr. Roots that he was in feeble health, and could live but a short time, and urged him to receive the money and deliver up to him his warehouse receipts. Mr. Roots refused to do so.

(Both the above questions and answers objected to severally by pl'tff's counsel)

And here, at six o'clock, the re-examination not being concluded, adjourned to Saturday, 9th inst., 2 P. M.

Saturday, June 9th, P. M.

Parties and witnesses having appeared, and pl'tffs' att'y declining to ask any further questions, and having entered the general objection to the last two questions, and the answers to the same, the examination of this witness was concluded, and he now signed the same.

HENRY LEWIS.

Deposition of James McWhinney, Witness for Defend'ts.

And thereupon James McWhinney, of lawful age, being produced, sworn and examined on the part of the defendants, deposes and says:—

1st interrogatory by defendants' counsel. State what connection, if any, you had with the pork packing business carried on by D. Macey & Co., at Indianapolis in the season of 1853–4; state also what relation, if any, you bore to Henry Lewis in regard to said business.

Answer. I went out there for a salary. Mr. Lewis was to give me a certain sum, and I was to furnish a certain amount of the capital. Mr. Lewis employed me to go there and to furnish a portion of the capital. I had no connection with that firm except that I was to do the best I could for Mr. Lewis. I was there on a salary. I had no other interest in it than that. I had no relation to Mr. Lewis in that business than that he was to pay me a salary for my time and money. The first arrangement was, that I was to furnish fifteen thousand dollars, but I did furnish (as we found on settling up) the sum of thirty thousand dollars.

2d interrogatory. State what knowledge, if any, you have of 415 hhds. of hams sent that season by D. Macey & Co., and shipped to Cincinnati directed to Roots & Coe. State by whom the funds were furnished with which the hogs were purchased from which said hams were cut; in what manner said funds were raised.

Answer. The packing of those hams was done under my superintendence. I furnished the first money to start the business; then the money was furnished by Mr. Henry Lewis, being raised by the acceptances of Adams & Buckingham.

3d interrogatory. State what knowledge, if any, you had of any warehouse receipts given by D. Macey & Co. to Roots & Coe that season for product of hogs cut by them; state when, with reference to giving said receipts, the hogs were purchased and cut.

(Plaintiffs' counsel objects to this third interrogatory.)

Answer. I knew that they did give warehouse receipts to Roots & Coe for the product of hogs cut by them after the hogs were purchased; they gave the warehouse receipt sometimes while the hogs were being cut—sometimes before they were in the pens.

4th interrogatory. State whether the hogs were paid for before or after the giving of the warehouse receipt.

Answer. Well, generally after—after we gave the warehouse receipts to raise the money on to pay for the hogs.

5th interrogatory. State for whom the hogs were purchased from which the 415 hhds. of hams were cut; with whose money were they bought; for whom were they cut and packed?

Answer. I purchased all, or nearly all the hogs that were purchased that season. I knew of no other owner save Henry Lewis. I was doing business for him. As I said before, I furnished some of the money myself, and the rest was furnished on these warehouse receipts, and Adams & Buckingham's acceptances.

6th interrogatory. State how said 415 hhds. of hams were packed; state what means, if any, were used to ascertain the weight of meat in each hhd.

Answer. I gave orders to have them packed with not less than

nine hundred pounds in each cask, and weighed; but they commenced packing, and merely allowing for salt and molasses, &c., and I found that was so uncertain that I told them not to weigh them at all, as that was of no account. I received letters nearly every day, calling my attention to those hams, as to having them pickled agreeably to the receipt, with the proper amount of salt and molasses; but I concealed the fact as to the manner of pickling from Mr. Lewis until near the end of the season, the packers representing to me that some would overrun 900 pounds, and, on the whole, make it average up to 900 pounds each. This was the first lot of meat that I ever packed in hogsheads. I did not know the importance of weighing the meat in each hogshead. This winter we weighed the meat in all the hogsheads as it went it. When it had been repacked and rebulked we found that we could only get in from 790 to 850 pounds, because it had got hard.

(Plaintiffs' counsel objects to this answer.)

7th interrogatory. State whether the 415 hhds. were packed under similar or different circumstances from those hogsheads which you state, in your last answer, were found to contain only from 790 to 850 pounds.

Answer. I think the meat was in about a similar condition. We packed from the block each year when the weather was suitable, and bulked it down when it was not.

8th interrogatory. State through whose hands, at Indianapolis, the money passed with which the hogs were bought; and from whom, and in what manner, it was forwarded to Indianapolis.

Answer. There was part of it passed through my hands, and part through David Macey's; I think about an equal amount through each. As far as I knew it was forwarded by Henry Lewis. It was forwarded by mail generally; once or twice we received money by express.

Cross-examined.

And on cross-examination said deponent states:—

1st cross-question. By whom was you employed in the season of 1853 and 1854—by Henry Lewis, or by David Macey & Co.?

Answer. By Henry Lewis.

2d cross-question. Who else was at Indianapolis, and in the employ of Henry Lewis the whole time, or for any portion of the time the 415 hhds. hams were being packed? State fully.

Answer. No one else, to my knowledge.

3d cross-question. State the names of the persons who packed, or who had anything to do with the packing of the hams, and where they now are.

Answer. I can't tell; the old man who superintends the packing, I don't know where he is gone now. I have not seen him but once since he put up the hams. I never knew the names of any of the packers,

but the old man who was superintendent, and I forget his name. I ought to recollect it, but cannot.

4th cross-question. At what time was the packing commenced, and at what time was it finished?

Answer. We commenced some time in December, and finished some time in January, I think.

5th cross-question. Who put the weights on the hhds.?

Answer. That I do not recollect.

6th cross-question. Am I to understand you that David Macey & Co. executed warehouse receipts for these hams when the hogs, of which the hams receipted for were to be a portion of the product, were in the pens and not settled for?

Answer. In part they did.

7th cross-question. What part? To what extent?

Answer. That I cannot say, to what extent.

8th cross-question. If you can give no further answer to the last question, how are you able to state that warehouse receipts were executed, when the property called for and covered by them was not in the warehouse?

Answer. I know it from having been there all the time.

9th cross-question. Did you make out any of the warehouse receipts? Did you keep an account of the property advanced upon by pl'tffs?

Answer. I did not make out any of the warehouse receipts. I was present when most, if not all of them were made. I did keep an account of the rolling property. In fact, I did of all of the amount that was advanced upon.

10th cross-question. Where is that account? Can you produce it; and if you can, will you be kind enough to do so?

Answer. I kept it in a little book. I cannot produce it. I have not seen it for twelve months. I do not know where it is. I kept it merely as a kind of memorandum at the time, not intended to be permanent.

11th cross-question. State to what extent warehouse receipts were given for hams as in the warehouse, when the hogs out of which the hams were to be cut had not been put in the pens of the slaughter-house. If you cannot, state the extent; state the instances, and where and whose the hogs were.

Answer. I could not tell to what extent. It is impossible for me to tell. I cannot state the instances. I don't recollect the names of a dozen men that I bought of.

12th cross-question. What was your business prior to 1853 and 1854?

Answer. I have been packing pork every winter for ten years perhaps, but not in Indiana; it was in Preble County, Ohio.

13th cross-question. You say you "told them not to weigh them at all." When was that? To whom did you say that? How many hhds. were then already packed?

Answer. Yes, after I found the manner they were packing, I thought it of no use to weigh them. This was in the forepart of the season. I said so to the men that was a packing them. I don't recollect exactly how many hhds. were then packed; probably thirty or forty (30 or 40), perhaps not so many.

14th cross-question. Have I understood you to say that you was present when all, or nearly all, the warehouse receipts were executed? Or if not, was this so? Did you know the terms of the receipts? Did you know the terms of the agreements accompanying the receipts?

Answer. Yes, sir; I think I was so present. I did know the terms of the receipts. I did not know anything of any agreements accompanying the receipts.

15th cross-question. Did you attend to the shipping of the hams; if not, who did?

Answer. I did not attend to shipping the hams. I am not certain who did. I think Mr. Macey did, perhaps. They were shipped at different times.

JAS. McWHINNEY.

Wallace Sigerson, Witness for Defendants.

William Sigerson, of the city of Cincinnati, about fifty years of age, being produced, sworn, and examined on behalf of the defendants, deposes and says:—

1st question. State what personal experience and observation, if any, you have had in regard to the curing of bacon hams. State what is the average shrinkage of hams cut in December, and cured and hung up and smoked in the usual way, and kept until June following.

Answer. My experience has been of a general nature during the past twenty years; in the handling hams during that time I have had opportunities of observing the process of curing hams, and as carried on in meat-houses. My opinion is that hams cured in the ordinary way will shrink from sixteen to eighteen per. cent. by the first of June.

Cross-examined.

And on cross-examination by plt'ffs, deposes and says:—

1st cross-question. What do you mean by being cured in the ordinary way, in making up your opinion as to the sixteen to eighteen per cent. shrinkage? When would such hams be put in pickle, when taken from it and put in the smoke-house, when canvassed, yellow-washed, and hung ready for shipment?

Answer. The ordinary way of curing hams in Cincinnati is curing them in pickle. They would be put in pickle during the month of December, would be taken from it some time of February. I should suppose they should be in pickle for six or seven weeks. The time in February when they should be taken out would depend upon the

but the old man who was superintendent, and I forget his name. I ought to recollect it, but cannot.

4th cross-question. At what time was the packing commenced, and at what time was it finished?

Answer. We commenced some time in December, and finished some time in January, I think.

5th cross-question. Who put the weights on the hhds.?

Answer. That I do not recollect.

6th cross-question. Am I to understand you that David Macey & Co. executed warehouse receipts for these hams when the hogs, of which the hams receipted for were to be a portion of the product, were in the pens and not settled for?

Answer. In part they did.

7th cross-question. What part? To what extent?

Answer. That I cannot say, to what extent.

8th cross-question. If you can give no further answer to the last question, how are you able to state that warehouse receipts were executed, when the property called for and covered by them was not in the warehouse?

Answer. I know it from having been there all the time.

9th cross-question. Did you make out any of the warehouse receipts? Did you keep an account of the property advanced upon by pl'tffs?

Answer. I did not make out any of the warehouse receipts. I was present when most, if not all of them were made. I did keep an account of the rolling property. In fact, I did of all of the amount that was advanced upon.

10th cross-question. Where is that account? Can you produce it; and if you can, will you be kind enough to do so?

Answer. I kept it in a little book. I cannot produce it. I have not seen it for twelve months. I do not know where it is. I kept it merely as a kind of memorandum at the time, not intended to be permanent.

11th cross-question. State to what extent warehouse receipts were given for hams as in the warehouse, when the hogs out of which the hams were to be cut had not been put in the pens of the slaughter-house. If you cannot, state the extent; state the instances, and where and whose the hogs were.

Answer. I could not tell to what extent. It is impossible for me to tell. I cannot state the instances. I don't recollect the names of a dozen men that I bought of.

12th cross-question. What was your business prior to 1853 and 1854?

Answer. I have been packing pork every winter for ten years perhaps, but not in Indiana; it was in Preble County, Ohio.

13th cross-question. You say you "told them not to weigh them at all." When was that? To whom did you say that? How many hhds. were then already packed?

Answer. Yes, after I found the manner they were packing, I thought it of no use to weigh them. This was in the forepart of the season. I said so to the men that was a packing them. I don't recollect exactly how many hhds. were then packed; probably thirty or forty (30 or 40), perhaps not so many.

14th cross-question. Have I understood you to say that you was present when all, or nearly all, the warehouse receipts were executed? Or if not, was this so? Did you know the terms of the receipts? Did you know the terms of the agreements accompanying the receipts?

Answer. Yes, sir; I think I was so present. I did know the terms of the receipts. I did not know anything of any agreements accompanying the receipts.

15th cross-question. Did you attend to the shipping of the hams; if not, who did?

Answer. I did not attend to shipping the hams. I am not certain who did. I think Mr. Macey did, perhaps. They were shipped at different times.

JAS. McWHINNEY.

Wallace Sigerson, Witness for Defendants.

William Sigerson, of the city of Cincinnati, about fifty years of age, being produced, sworn, and examined on behalf of the defendants, deposes and says:—

1st question. State what personal experience and observation, if any, you have had in regard to the curing of bacon hams. State what is the average shrinkage of hams cut in December, and cured and hung up and smoked in the usual way, and kept until June following.

Answer. My experience has been of a general nature during the past twenty years; in the handling hams during that time I have had opportunities of observing the process of curing hams, and as carried on in meat-houses. My opinion is that hams cured in the ordinary way will shrink from sixteen to eighteen per. cent. by the first of June.

Cross-examined.

And on cross-examination by plt'ffs, deposes and says:—

1st cross-question. What do you mean by being cured in the ordinary way, in making up your opinion as to the sixteen to eighteen per cent. shrinkage? When would such hams be put in pickle, when taken from it and put in the smoke-house, when canvassed, yellow-washed, and hung ready for shipment?

Answer. The ordinary way of curing hams in Cincinnati is curing them in pickle. They would be put in pickle during the month of December, would be taken from it some time of February. I should suppose they should be in pickle for six or seven weeks. The time in February when they should be taken out would depend upon the

time when they were put in December. The time in the smoke-house depends upon the will of the persons who smoke them. Some take them out sooner, some later. I do not think there is any general rule in Cincinnati. They are to be smoked immediately after taking out of the pickle. I cannot state the average time they would be smoked in Cincinnati. Some would smoke them two weeks, some three weeks, and some more. They would be canvassed probably some time in the month of March. They would be yellow-washed and hung up immediately after being canvassed.

2d cross-question. Do you mean to express any opinion as to what the shrinkage would be on hams cut in January instead of December?

Answer. I don't think there would be any difference, except that the longer they hung up the greater would be the shrinkage.

3d cross-question. Have you expressed or intended to express any opinion as to what the shrinkage of hams would be, if kept in pickle greatly beyond what you have spoken of as the ordinary time for being kept in pickle, or have you expressed, or intended to express any opinion as to what the shrinkage would be of hams in pickle on the fourth April, during process of further cure, and until canvassed, yellow-washed, and ready for sale on the fourth of May next following?

Answer. I have not expressed or intended to express any opinion as to hams so treated.

Re-examined by Defendants.

And being re-examined by defendants' counsel, deponent says:—

1st question. State what change in the weight of hams is caused by their being put in pickle; does the pickling of hams materially affect their weight; and if so, does it increase or diminish the weight?

(Pl'tffs' counsel objects to the above 1st question generally.)

Answer. My experience is that it diminishes the weight; my experience is that it loses from one (1) 4 per cent.

And in answer to an additional question by pl'tffs' counsel, deponent says:—

Question by Pl'tffs' Counsel.

After hams have been in pickle the ordinary time, would there be any perceptible shrinkage by their being kept in pickle two, three, or four months longer?

Answer. I have no experience on that subject, and cannot say.

WALLACE SIGERSON.

Joseph H. Burrowes, Witness for Defendants.

And Joseph H. Burrowes, of the city of Cincinnati, Ohio, of law-

ful age, being produced, sworn, and examined on behalf of the defendants, deposes and says:—

1st question. State what personal experience and observation, if any, you have had in regard to the curing of bacon hams. State what is the average shrinkage of hams cut in December, and *and* cured and hung up, and smoked in the usual way, and kept until June following.

Answer. I am a ham curer and dealer in provisions, and have been for twenty years. My experience is the loss or shrinkage would be from seventeen to twenty per cent. from the block to the end of the smoking; and that, afterwards canvassed, washed, and hung up, the shrinkage would be from two (2) to two and a half (2½) per cent. for the next three or four months—that is, 2 or 2½ per cent. per month. Under very favorable circumstances, as to the quality of the meat, the shrinkage would be from seventeen to twenty per cent., usually, from the block to the end of the smoking; and that, after being canvassed, washed, and hung up, the shrinkage would be from two (2) to two and a half (2½) per cent. for the next three or four months—that is, 2 or 2½ per cent. per month.

Under very favorable circumstances as to the quality of the meat, the shrinkage in curing and smoking might be a trifle less than the lowest rate named, but under unfavorable circumstances as to the quality of the meat, the shrinkage might be even greater than the highest rate named.

Cross-examined.

And on cross-examination by plaintiffs' counsel, deponent says:—

1st question. Have you expressed, or intended to express, any opinion as to what would be the shrinkage of hams having been already in pickle two or three months during the process of further cure, and until canvassed, yellow-washed, and ready for market, the whole process to be commenced and completed in thirty (30) days?

Answer. I have only intended to express an opinion as to the result of the curing and smoking of hams taken green from the block, cured and smoked thereafter, which could not be completed safely in thirty days.

J. H. BURROWES.

Exhibit A. J. B., Com'r.

CINCINNATI, *April* 4, 1854.

Received in store of Henry Lewis, and subject to the order of Roots & Coe, but not accountable for damages by fire, four hundred and fifteen (415) hogsheads sugar-cured hams in pickle, each hogshead containing nine hundred (900) pounds net weight, said hams to be smoked and canvassed within thirty days, and delivered to said Roots & Coe, or their order, said Roots & Coe being responsible to Henry Lewis for the smoking and canvassing of the same. And it

is further agreed between the parties, when the above hams are delivered to said Roots & Coe, then and in that case my former warehouse receipts for twenty-five hundred barrels mess pork, four hundred barrels lard, and *and* one hundred thousand pounds sides from the block, and one hundred thousand pounds of shoulders from the block, shall be given up and cancelled, but I am not responsible for smoking or canvassing said hams, that being a matter between said Henry Lewis and said Roots & Coe.

SAMUEL LEWIS.

Referred in the deposition of Henry Lewis, on page 3d, as "Exhibit *A*."

J. BIRNEY, *Com.*

Indorsed.

Received, Cincinnati, April 5, 1854, on the within warehouse receipt, eighty-four and one-half hogsheads hams, weighing seventy six thousand pounds. ROOTS & COE.

Received, Cincinnati, May 27, 1854, one hundred and eighty (180) tierces, 4,207 pieces hams, smoked, as part of the hams mentioned in the within receipt.

ROOTS & COE,
per AYDELOTT.

Received, Cincinnati, June 19, '54, three hundred tierces, 7,373 pieces hams, smoked, as part of the hams mentioned in the within receipt.

ROOTS & COE.

Exhibit B. J. B., Com'r.

CINCINNATI, *April* 4, 1854.

Whereas Roots & Coe hold Samuel Lewis's warehouse receipt of this date for four hundred and fifteen hhds. sugar-cured hams in pickle, each hhd. containing nine hundred pounds net weight, to be delivered within thirty days: Now, I do hereby agree to smoke, canvas, yellow-wash, and pack the same, free of charge, to Roots & Coe, and also agree not to require Roots & Coe to refund to me the freight on the same from Indianapolis to this place, being one hundred and fifty cents per hhd., which I have paid in consideration of having received an advance on the above-mentioned hams, from Adams & Buckingham, through said Roots & Coe. But in case I should purchase and pay for the same within thirty days from this date, then Roots & Coe agree to refund the freight from Indianapolis to this point, being one dollar and fifty cents per hhd.

HENRY LEWIS.

Paper referred in the deposition of Henry Lewis.

JAS. BIRNEY,
Com'r.

Exhibit D.

CINCINNATI, *June* 21, '54.

Messrs. McCullough & Culbertson,

Bo't of Roots & Coe,

212 tierces S. C. hams, 5,339 ps. 6,707, at 9¼ c.,	$6,204 07
Drayage,	13 23
	$6,217 32

The above is the duplicate bill referred to in the deposition of J. H. Aydelott as marked "exhibit *D.*"

J. BIRNEY,
Com'r.

Exhibit F.

(Copy.)

CINCINNATI, *May* 2*d*, 1854.

Messrs. ROOTS & COE, Cincinnati, O.

GENTLEMEN: The four hundred and fifteen hhds. sugar-cured hams, for which you hold my warehouse receipt, are now in store at the warehouse of Henry Lewis, on Sycamore Street, in this city, and ready to be delivered to you or your order in compliance with my obligation of April 4th, 1854. You will please call and receive them, and give up to me to be cancelled, as by your agreement you are bound to do, my former warehouse receipts for twenty-five hundred barrels mess pork, four hundred barrels lard, and one hundred thousand pounds of sides from the block, and one hundred thousand pounds of shoulders from the block.

(Signed) SAMUEL LEWIS,
By HENRY LEWIS.

The original of which the above is a true copy, was delivered by me in person on the day and date above written.

E. B. TOWNSEND.

Paper referred by witness Townsend as "exhibit *F.*

J. B.,
Com'r.

Exhibit G.

(Copy.)

CINCINNATI, *May* 3*d*, 1854.

Messrs. ROOTS & COE.

GENT.: We have heard from Mr. Lewis; he will not be in before this afternoon, but sends word if he is not to canvas the hams they

must be weighed preparatory for delivery on to-morrow, which we shall do this afternoon. If you think proper, can you send some person up to attend to the weighing and counting the same?

Yours respectfully,
E. B. TOWNSEND,
per HENRY LEWIS.

Paper referred to by witness Townsend as "exhibit *G.*"

JAS. BIRNEY,
Com'r.

Exhibit H.

CINCINNATI, *June 27th*, 1854.

Mr. Henry Lewis's order on ourselves to the order of Roots & Coe for the proceeds of two hundred and twelve tierces hams, to the amount of sixty-two hundred and seventeen $\frac{32}{100}$ dollars, will be accepted by us.

McCULLOUGH & CULBERTSON.

Above is the paper referred to in the deposition of H. Lewis as "exhibit *H.*"

J. B.,
Com'r.

Exhibit "A 1."

Received, Indianapolis, January 10th, 1854, of Mr. Henry Lewis, in good order and condition, one hundred hogheads sugar-cured hams, average weight 900 lbs each; one hundred and fifty thousand pounds of sides in bulk, on account of Adams & Buckingham, New York, to be forwarded to them without unnecessary delay, or to Graham & Buckingham, of New Orleans, as Messrs. Roots & Coe, of Cincinnati, may direct.

Marked *A. & B.* N. Y.

D. MACY & CO.

100 hhds. S. C. hams.
150,000 lbs. of sides, in bulk.

Above is paper referred to in deposition of H. Lewis as "exhibit *A* 1."

J. B.,
Com'r.

Exhibit A 2.

CINCINNATI, *January 11th*, 1854.

Received of Roots & Coe, their drafts on Adams & Buckingham, of New York, as follows:—

$5500, dated 12 Jan'y, 1854, 4 months;
5675, " 13 " " 4 months;

both payable to the order of D. Macy. The above are an advance on

100 hhds. sugar-cured hams;
150,000 lbs. of sides in bulk;

as per David Macy & Co.'s warehouse receipt, dated Indianapolis, January 10th, 1854, and subject to the order of said Roots & Coe.

My understanding and agreement with said Roots & Coe is, that in case the market price of the above articles should decline, said Roots & Coe, or Adams & Buckingham, shall have the privilege of selling them at any time unless I keep a satisfactory margin between the amount advanced and the market price.

And I further understand and agree that the above hams and sides shall be sold to meet the drafts mentioned above.

HENRY LEWIS.

The above is the paper referred to in the deposition of H. Lewis as "Exhibit *A* 2."

Exhibit A 3.

Received, Indianapolis, December 20th, 1853, of Mr. Henry Lewis, in good order and condition,

Marked A. B., N. Y.
One hundred bbls. of clear pork;
One hundred bbls. of No. 1 lard;
Two hundred bbls. of mess pork;

per account of Adams & Buckinghams, of New York; and we do hereby forward the same without unnecessary delay to them, as Messrs. Roots & Coe may direct.

100 bbls. clear pork.
100 bbls. No. 1 lard.
300 bbls. mess pork.

DAVID MACY & CO.

Paper referred to by witness Lewis as "Exhibit *A* 3."

J. BIRNEY,
Com'r.

Exhibit A 4.

CINCINNATI, *December* 21, 1853.

Received of Roots & Coe their draft on Messrs. Adams & Buckingham, New York, at three months, payable to the order of David Macy, of Indianapolis, Ind., for forty hundred and thirty-five dollars.

The above is an advance on

One hundred bbls. clear pork;
One hundred bbls. No. 1 lard;
Two hundred bbls. mess pork;

as per David Macy & Co.'s warehouse receipt, dated December 20th, 1853, at Indianapolis, Ind., and subject to the order of said Roots & Coe.

My understanding and agreement with said Roots & Coe is, for three months from this date: but, if the market price of pork and lard should decline, said Adams & Buckingham have the privilege of selling the above mentioned pork and lard at any time, unless I keep a satisfactory margin between the amount advanced and the market price.

HENRY LEWIS.

Referred to by witness Lewis as "Exhibit *A* 4."

Exhibit A 6.

Received, Indianapolis, Dec'r 24th, 1853, of Mr. Henry Lewis, fifty thousand pounds of bulk sides in our pork-house in this city, and fifty hogshead of hams to be cured in sugar-cure pickle, containing about 900 lbs. in each hhd., which we agree to forward to said Lewis or assigns, without unnecessary delay.

50,000 lbs. sides.
50 hhds. of hams.

DAVID MACY & CO.

Referred to by witness Lewis as "Exhibit *A* 6."

JAMES BIRNEY,
Com'r.

Exhibit A 7.

Received, Indianapolis, Dec. 24th, 1853, of Mr. Henry Lewis, in good order and condition—

Marked A. & B., N. Y. Five hundred barrels of mess pork;
Same. One hundred barrels No. 1 lard;
One hundred barrels of clear pork;

for account of Messrs. Adams & Buckingham, New York; and we hereby agree to forward the same, without unnecessary delay, to them or to Graham & Buckingham, New Orleans, as Messrs. Roots & Coe, of Cincinnati, may direct.

500 bbls. mess pork.
100 bbls. No. 1 lard.
100 bbls. clear pork.

DAVID MACY & CO.

Referred to by witness Lewis as "Exhibit *A* 7."

Exhibit A 8.

CINCINNATI, *December 27th*, 1853.

Received of Roots & Coe, their drafts on Adams & Buckingham, of New York, as follows, viz:—

$5973 75 at 4 months, dated Dec'r 26;
$5198 75 at 90 days, dated Dec'r 27;

both payable to the order of David Macy. The above drafts are on an advance on pork, lard, bulk sides and hams in hhds., to be cured in sugar-cure pickle, as per David Macy & Co.'s warehouse receipt, dated December 24th, at Indianapolis, Ind., and subject to the order of said Roots & Coe.

My understanding and agreement with Roots & Coe is, that the above advance of $5973 75 for 4 months from date of draft, and that the above advance of $5198 75 is for 90 days from date of draft; but if the market price of the articles advanced upon as above mentioned should decline, then the said Adams & Buckingham have the privilege of selling the above mentioned article at any time, unless I keep a satisfactory margin between the advances and the market price.

HENRY LEWIS.

Referred to by witness Lewis as "Exhibit *A* 8."

JAMES BIRNEY,
Com'r.

Exhibit A 9.

Received, Indianapolis, Dec. 28, 1853, of Mr. Henry Lewis, in good order and condition—

Marked A. & B., N. Y. Same. Five hundred barrels of mess pork;
200 barrels No. 1 lard pork, barrel size;
90,000 lbs. of hams ready for pickling;

to be packed and sugar cured in good order in tight hhds., 900 lbs. in each hhd., for account of Messrs. Adams & Buckinghams, New York; and we hereby agree to forward the same without unnecessary delay to them, or to Graham & Buckinghams, New Orleans, as Messrs. Roots & Coe, of Cincinnati, may direct.

DAVID MACY & CO.

500 bbls. mess pork.
200 " No. 1 lard pork, bbl. size.
90,000 lbs. hams.

Referred to by witness Lewis as "Exhibit *A* 9."

J. B.,
Com'r.

Exhibit A 10.

CINCINNATI, *Dec'r 29th*, 1853.

Rec'd of Roots & Coe their drafts on Adams & Buckinghams, as follows:—

Dec'r 30th, three months for $6,395;
" 31st, three months for $6,000;

both payable to the order of David Macy.

The above are an advance on 500 bbls. mess pork, and 200 bbls. No. 1 lard, pork bbl. size, 90,000 lbs. of hams ready for packing, to be packed, sugar cured, in good order, in tight hhds., 900 lbs. in each hhd., as per David Macy & Co.'s warehouse receipt, dated Dec'r 28th, '53, at Indianapolis, Ind., subject to the order of Roots & Coe. My understanding and agreement with Roots & Coe is, that the above advance of $6,395 is for the term of three months, and the advance of $6,000 is for the term of three months from the date of the drafts. And I hereby agree to keep a satisfactory margin between the amount advanced and the market price; and in case of a decline on the market price of the above mentioned articles, and a failure on my part to keep good a satisfactory margin, then said Roots & Coe shall have the privilege of selling the above mentioned articles, or any of them, to meet their endorsements of my drafts as above mentioned. And I further agree that the above pork, lard, and hams, shall be sold in time to meet my drafts above mentioned as they mature.

HENRY LEWIS.

Referred to by witness Lewis as "Exhibit *A* 10."

J. B.,
Com'r.

Exhibit A 11.

Received, Indianapolis, January 19th, 1854, of Mr. Henry Lewis, in good order and condition—

Marked A. & B., N. Y.	One hundred and fifty tierces of leaf lard.
Same.	One hundred tierces of head lard.
Same.	One hundred and fifty barrels of head lard, pork bbl. size.
Same.	Seventy-five hhds. of sugar-cured hams, average weight 900 lbs. each.
Same.	Two hundred barrels of rump pork.
Same.	Two hundred barrels of clear pork.

One hundred thousand pounds of bulk sides for account of Messrs. Adams & Buckinghams, New York; and we hereby agree to forward the same without unnecessary delay to them, or to Graham & Buck-

inghams, New Orleans, as Messrs. Roots & Coe, of Cincinnati, may direct.

DAVID MACY & CO.

Referred to by witness Lewis as "Exhibit *A* 11."

J. B.,
Com'r.

Exhibit A 12.

CINCINNATI, *Jan'y 20th*, 1854.

Received of Roots & Coe, their drafts on Adams & Buckinghams, as follows:—

$4,345 62, 4 mo's, dated Jan'y 21,
4,345 62, 4 " " "
4,345 63, 4 " " "
4,345 63, 4 " " "
To order of David Macy.

The above are an advance on—

150 tierces leaf lard,
100 do. head do.
150 bbls. do. do.
75 hhds. sugar-cured hams,
200 bbls. rump pork,
200 do. clear do.
100,000 lbs. of bulk sides,

as per David Macy & Co.'s warehouse receipt, dated at Indianapolis, Ind., Jan'y 19th, 1854. My understanding and agreement with said Roots & Coe is, that the above mentioned product of the hog is to be sold in time to meet their drafts as above. And in case of a decline in the market price, and a failure on my part to keep a margin satisfactory between the amount advanced and the market price, the said Roots & Coe, or Adams & Buckinghams, have the privilege of selling the above articles advanced upon at any time.

HENRY LEWIS.

Referred to by witness Lewis as "Exhibit *A* 12."

Exhibit B 1.

D. MACY & Co., Packers, Indianapolis, Ind.

INDIANAPOLIS, *February 3d*, 1854.

Received of D. Macy & Co., in apparent good order, to be transported on the Lawrenceburg and Cincinnati Railroad, the under named articles, marked as per margin, which we promise to deliver without unnecessary delay in like good order, subject to the agreement now made and hereinafter expressed for R. R. Agent, Law-

Exhibit A 10.

CINCINNATI, *Dec'r 29th*, 1853.

Rec'd of Roots & Coe their drafts on Adams & Buckinghams, as follows:—

Dec'r 30th, three months for $6,395;
" 31st, three months for $6,000;

both payable to the order of David Macy.

The above are an advance on 500 bbls. mess pork, and 200 bbls. No. 1 lard, pork bbl. size, 90,000 lbs. of hams ready for packing, to be packed, sugar cured, in good order, in tight hhds., 900 lbs. in each hhd., as per David Macy & Co.'s warehouse receipt, dated Dec'r 28th, '53, at Indianapolis, Ind., subject to the order of Roots & Coe. My understanding and agreement with Roots & Coe is, that the above advance of $6,395 is for the term of three months, and the advance of $6,000 is for the term of three months from the date of the drafts. And I hereby agree to keep a satisfactory margin between the amount advanced and the market price; and in case of a decline on the market price of the above mentioned articles, and a failure on my part to keep good a satisfactory margin, then said Roots & Coe shall have the privilege of selling the above mentioned articles, or any of them, to meet their endorsements of my drafts as above mentioned. And I further agree that the above pork, lard, and hams, shall be sold in time to meet my drafts above mentioned as they mature.

HENRY LEWIS.

Referred to by witness Lewis as "Exhibit *A* 10."

J. B.,
Com'r.

Exhibit A 11.

Received, Indianapolis, January 19th, 1854, of Mr. Henry Lewis, in good order and condition—

Marked A. & B., N. Y.	One hundred and fifty tierces of leaf lard.
Same.	One hundred tierces of head lard.
Same.	One hundred and fifty barrels of head lard, pork bbl. size.
Same.	Seventy-five hhds. of sugar-cured hams, average weight 900 lbs. each.
Same.	Two hundred barrels of rump pork.
Same.	Two hundred barrels of clear pork.

One hundred thousand pounds of bulk sides for account of Messrs. Adams & Buckinghams, New York; and we hereby agree to forward the same without unnecessary delay to them, or to Graham & Buck-

inghams, New Orleans, as Messrs. Roots & Coe, of Cincinnati, may direct.

DAVID MACY & CO.

Referred to by witness Lewis as "Exhibit *A* 11."

J. B.,
Com'r.

Exhibit A 12.

CINCINNATI, *Jan'y 20th*, 1854.

Received of Roots & Coe, their drafts on Adams & Buckinghams, as follows:—

$4,345 62,	4	mo's,	dated	Jan'y 21,
4,345 62,	4	"	"	"
4,345 63,	4	"	"	"
4,345 63,	4	"	"	"

To order of David Macy.

The above are an advance on—

150 tierces leaf lard,
100 do. head do.
150 bbls. do. do.
75 hhds. sugar-cured hams,
200 bbls. rump pork,
200 do. clear do.
100,000 lbs. of bulk sides,

as per David Macy & Co.'s warehouse receipt, dated at Indianapolis, Ind., Jan'y 19th, 1854. My understanding and agreement with said Roots & Coe is, that the above mentioned product of the hog is to be sold in time to meet their drafts as above. And in case of a decline in the market price, and a failure on my part to keep a margin satisfactory between the amount advanced and the market price, the said Roots & Coe, or Adams & Buckinghams, have the privilege of selling the above articles advanced upon at any time.

HENRY LEWIS.

Referred to by witness Lewis as "Exhibit *A* 12."

Exhibit B 1.

D. MACY & Co., Packers, Indianapolis, Ind.

INDIANAPOLIS, *February 3d*, 1854.

Received of D. Macy & Co., in apparent good order, to be transported on the Lawrenceburg and Cincinnati Railroad, the under named articles, marked as per margin, which we promise to deliver without unnecessary delay in like good order, subject to the agreement now made and hereinafter expressed for R. R. Agent, Law-

renceburg, at 25 cents per barrel, on payment of freight as per tariff of the company, and presentation of this receipt without alteration or erasure.

It is agreed, and is part of the consideration of this contract, that the railroad company is not to be responsible for leakage, fire (except from locomotives in transportation, unavoidable accidents, or any cause whatever, unless the same be shown to have occurred by the fraud or gross negligence of ourselves, our agents, or servants; and that the liability of said company shall cease after the delivery of said articles at the station named, as to burglary, robbery, the loss or damage of said goods, unless any such burglary, robbery, or theft shall be proven to have been the act of some agent or servant of said company, connected with such station, or having access thereto. It is further stipulated that no liability shall attach to the company for losses or damages not apparent on delivery, unless the same and specified within ten days from the date of this receipt; nor for apparent damages, unless the same be claimed and specified before the articles are taken from the place of delivery. All hollow ware, stoves and castings, are shipped at the owner's risk, solely as to breakage. Contents of stoves packed therein, are not receipted for as to number of pieces or description.

Marks.	Packages.	Articles.	Weight.
A. & B.	503	bbls. mess pork	
	137	" clear do.	
	37	" rump do.	
	167	tierces leaf lard	
	87	bbls. do.	
	931		

Subject to the order of Messrs. Roots & Co., Cincinnati.

For L. & C. R. R. Co.

W. LORING.

Referred to in depos'n H. Lewis as "Exhibit *B* 1."

(Duplicate.) J. B., *Com.*

Exhibit B 2.

D. MACY & Co., Packers, Indianapolis, Ind.

INDIANAPOLIS, *February 13th*, 1854.

Received of D. Macy & Co., in apparent good order, to be transported on the Indianapolis and Cincinnati R. R., the undernamed articles, marked as per margin, which we promise to deliver without unnecessary delay, in like good order, subject to the agreement now made, and hereinafter expressed, for Adams & Buckinghams, N. Y.,

at the regular station at Lawrenceburg, at 25 c. per barrel, on payment of freight as per tariff of the company, and presentation of this receipt without alteration or erasure.

It is agreed, and is part of the consideration of this contract, that the railroad company is not to be responsible for leakage, fire (except from locomotives in transportation), unavoidable accidents, or any cause whatever, unless the same is shown to have occurred by the fraud or gross negligence of ourselves, our agents, or servants; and that the liability of said company shall cease after the delivery of the articles at the station named, as to any burglary, robbery, theft, loss or damage of said goods, unless any such burglary, robbery or theft shall be proven to have been the act of some agent or servant of said company, connected with such station, or having access thereto. It is further stipulated, that no liability shall attach to the company for losses or damages not apparent on delivery, unless the same be claimed and specified within ten days from the date of this receipt; nor for the apparent damages, unless the same be claimed and specified before the articles are taken from the place of delivery. All hollow ware, stoves and castings, are shipped at the owner's risk solely as to breakage. Contents of stoves packed therein are not receipted for, as to number of pieces or description.

Marks.	Packages.	Articles.	Weight.
A. & B. Adams & Buckingham, N. Y.	485 bbls.	pork, mess, rump and clear.	

Subject to order of Roots & Coe.

For L. & C. R. R. Co.

W. LORING.

Referred to by H. Lewis, witness, as "Exhibit *B* 2."

(Duplicate.) J. BIRNEY, *Com.*

Exhibit B 3.

D. MACY & Co., Packers, Indianapolis, Ind.

INDIANAPOLIS, *February 7th*, 1854.

Received of D. Macy & Co., in apparent good order, to be transported on the Lawrenceburg and Cincinnati R. R., the undernamed articles; marked as per margin, which we promise to deliver, without unnecessary delay, in like good order, subject to the agreement now made and hereafter expressed for R. R. agent, Lawrenceburg, at 25 cents per barrel, on payment of freight as per tariff of the company, and presentation of this receipt without alteration or erasure. It is agreed, and is part of the consideration of this contract, that the railroad company is not to be responsible for leakage, fire (except

from locomotives in transportation), unavoidable accidents, or any cause whatever, unless the same be shown to have occurred by the fraud or gross negligence of ourselves, our agents, or servants; and that the liability of said company shall cease after the delivery of said articles at the station named, as to any burglary, robbery, theft, loss, or damage of said goods, unless any such burglary, robbery, or theft shall be proven to have been the act of some agent or servant of said company, connected with such station, or having access thereto. It is further stipulated that no liability shall attach to the company for losses or damages not apparent on delivery, unless the same be claimed and specified within ten days from the date of this receipt; nor for apparent damages, unless the same be claimed and specified before the articles are taken from the place of delivery. All hollow-ware, stoves, and castings are shipped at the owner's risk solely as to breakage. Contents of stoves, packed therein, are not receipted for as to number of pieces or description.

Mark.	Packages.	Articles.	Weight.
A. & B.	157	barrels of mess pork.	
Adams & Bucking-	114	do. clear.	
ham, N. York.	271		
	240	do. lard.	
	55	tierces do.	
	566		

For I. & C. R. R. Co.

W. LORING.

Referred to by witness H. Lewis as "Exhibit *B* 3."

J. BIRNEY,
Com.

Exhibit B 4.

D. MACY & Co., Packers, Indianapolis, Ind.

INDIANAPOLIS, *February* 24, 1854.

Received of D. Macy & Co., in apparent good order, to be transported on the M., I. & P. Railroad, the undernamed articles, marked as per margin, which we promise to deliver, without unnecessary delay, in like good order, subject to the agreement now made and hereinafter expressed for R. R. agent at the regular station at Madison, at 25 c. per barrel, on payment of freight as per tariff of the company, and presentation of this receipt without alteration or erasure.

It is agreed, and is part of the consideration of this contract, that the railroad company is not to be responsible for leakage, fire (except from locomotives in transportation), unavoidable accidents, or any cause

whatever, unless the same be shown to have occurred by the fraud or gross negligence of ourselves, our agents, or servants; and that the liability of said company shall cease after the delivery of said articles at the station named, as to any burglary, robbery, theft, loss, or damage of said goods, unless any such burglary, robbery, or theft shall be proven to have been the act of some agent or servant of said company, connected with such station, or having access thereto. It is further stipulated that no liability shall attach to the company for losses or damages not apparent on delivery, unless the same be claimed and specified within ten days from the date of this receipt; nor for apparent damages, unless the same be claimed and specified before the articles are taken away from the place of delivery. All hollow-ware, stoves, and castings are shipped at the owner's risk solely as to breakage. Contents of stoves, packed therein, are not receipted for as to number of pieces or description.

Marks.	Packages.	Articles.
A. & B., N. Y.	400 bbls.	mess pork, 21 Feb'y, 1854.
A. & B., N. Y.	200 bbls.	mess pork, 24 Feb'y.

All subject to the order of Roots & Coe, Cin.

E. R. MORLEY.

Referred to by witness Lewis as "Exhibit *B* 4."

J. BIRNEY,
Com.

Exhibit B 5.

D. MACY & Co., Packers, Indianapolis, Ind.

INDIANAPOLIS, *February 27th*, 1854.

Received of D. Macy & Co., in apparent good order, to be transported on the M. I. & R. R. R., the under-named articles, marked as per margin, which we promise to deliver, without unnecessary delay, in like good order, subject to the agreement now made and hereinafter expressed for R. R. agent at the regular station at Madison, at 25 c. per barrel, on payment of freight as per tariff of the company, and presentation of this receipt without alteration or erasure. It is agreed, and is part of the consideration of this contract, that the railroad company is not to be responsible for leakage, fire (except from locomotives in transportation), unavoidable accidents, or any cause whatever, unless the same be shown to have occurred by the fraud or gross negligence of ourselves, our agents or servants; and that the liability of said company shall cease after the delivery of said articles at the station named, as to any burglary, robbery, theft, loss, or damage of said goods, unless any such burglary, robbery, or theft shall be proven to have been the act of some agent or

from locomotives in transportation), unavoidable accidents, or any cause whatever, unless the same be shown to have occurred by the fraud or gross negligence of ourselves, our agents, or servants; and that the liability of said company shall cease after the delivery of said articles at the station named, as to any burglary, robbery, theft, loss, or damage of said goods, unless any such burglary, robbery, or theft shall be proven to have been the act of some agent or servant of said company, connected with such station, or having access thereto. It is further stipulated that no liability shall attach to the company for losses or damages not apparent on delivery, unless the same be claimed and specified within ten days from the date of this receipt; nor for apparent damages, unless the same be claimed and specified before the articles are taken from the place of delivery. All hollow-ware, stoves, and castings are shipped at the owner's risk solely as to breakage. Contents of stoves, packed therein, are not receipted for as to number of pieces or description.

Mark.	Packages.	Articles.	Weight.
A. & B.	157	barrels of mess pork.	
Adams & Bucking-	114	do. clear.	
ham, N. York.	271		
	240	do. lard.	
	55	tierces do.	
	566		

For I. & C. R. R. Co.

W. LORING.

Referred to by witness H. Lewis as "Exhibit *B* 3."

J. BIRNEY,
Com.

Exhibit B 4.

D. MACY & Co., Packers, Indianapolis, Ind.

INDIANAPOLIS, *February* 24, 1854.

Received of D. Macy & Co., in apparent good order, to be transported on the M., I. & P. Railroad, the undernamed articles, marked as per margin, which we promise to deliver, without unnecessary delay, in like good order, subject to the agreement now made and hereinafter expressed for R. R. agent at the regular station at Madison, at 25 c. per barrel, on payment of freight as per tariff of the company, and presentation of this receipt without alteration or erasure.

It is agreed, and is part of the consideration of this contract, that the railroad company is not to be responsible for leakage, fire (except from locomotives in transportation), unavoidable accidents, or any cause

whatever, unless the same be shown to have occurred by the fraud or gross negligence of ourselves, our agents, or servants; and that the liability of said company shall cease after the delivery of said articles at the station named, as to any burglary, robbery, theft, loss, or damage of said goods, unless any such burglary, robbery, or theft shall be proven to have been the act of some agent or servant of said company, connected with such station, or having access thereto. It is further stipulated that no liability shall attach to the company for losses or damages not apparent on delivery, unless the same be claimed and specified within ten days from the date of this receipt; nor for apparent damages, unless the same be claimed and specified before the articles are taken away from the place of delivery. All hollow-ware, stoves, and castings are shipped at the owner's risk solely as to breakage. Contents of stoves, packed therein, are not receipted for as to number of pieces or description.

Marks.	Packages.	Articles.
A. & B., N. Y.	400 bbls.	mess pork, 21 Feb'y, 1854.
A. & B., N. Y.	200 bbls.	mess pork, 24 Feb'y.

All subject to the order of Roots & Coe, Cin.

E. R. MORLEY.

Referred to by witness Lewis as "Exhibit *B* 4."

J. BIRNEY,
Com.

Exhibit B 5.

D. MACY & Co., Packers, Indianapolis, Ind.

INDIANAPOLIS, *February* 27*th*, 1854.

Received of D. Macy & Co., in apparent good order, to be transported on the M. I. & R. R. R., the under-named articles, marked as per margin, which we promise to deliver, without unnecessary delay, in like good order, subject to the agreement now made and hereinafter expressed for R. R. agent at the regular station at Madison, at 25 c. per barrel, on payment of freight as per tariff of the company, and presentation of this receipt without alteration or erasure. It is agreed, and is part of the consideration of this contract, that the railroad company is not to be responsible for leakage, fire (except from locomotives in transportation), unavoidable accidents, or any cause whatever, unless the same be shown to have occurred by the fraud or gross negligence of ourselves, our agents or servants; and that the liability of said company shall cease after the delivery of said articles at the station named, as to any burglary, robbery, theft, loss, or damage of said goods, unless any such burglary, robbery, or theft shall be proven to have been the act of some agent or

servant of said company, connected with such station, or having access thereto.

It is further stipulated, that no liability shall attach to the company for losses or damages not apparent on delivery, unless the same be claimed and specified within ten days from the date of this receipt; nor for apparent damages, unless the same is claimed and specified before the articles are taken from the place of delivery. All hollow ware, stoves and castings are shipped at the owner's risk solely as to breakage. Contents of stoves packed therein are not receipted for as to number of pieces or description.

Marks.	Packages.	Articles.	Weight.
A. & B., N. Y.	554	bbls. pork.	

E. R. MORLEY.

Subject to order Roots & Coe, Cincinnati.

Referred to by witness Lewis as "Exhibit *B* 5."

(Duplicate.)

Exhibit B 6.

Bingham's Transportation Line, *via* canals and railroads, from Pittsburg to Philadelphia and Baltimore; consisting of a double daily line.

Bingham & Co., Canal Basin, Pittsburg.

Bingham & Dock, 276 Market Street, Philadelphia.

James Bingham, No. 10 West Street, New York.

James Wilson, North Street, Baltimore.

Shipped and consigned to George Bingham & Co., Pittsburg, by Roots & Coe, in apparent good order, the following packages, marked as per margin, which we agree to receive at, and carry from Pittsburg by canals and railroads, and deliver in like good order (the incidental damages and delays of the railroads, canal, river, bay and sea navigation, fire in boats, cars, and transshipping depots excepted, of which the certificate of a supervisor, collector or lock-keeper, or the affidavit of a boat captain or car master shall be evidence), to Adams & Buckinghams, on presentation of this receipt, and payment of freight at our warehouse in New York, at the rate of two dollars and sixteen cents per bbl., with the privilege, in case of detention by breaches or otherwise, of forwarding by other conveyances at the risk of the owner, the expense thereof to be paid in addition to the stipulated freight. Freights delivered in Philadelphia and Baltimore at the warehouse of the line, in other cities on the wharf, and subject to be reweighed at Pittsburg and settled for accordingly. Not accountable for weight of flour. The responsibility of the line to commence upon shipment at Pittsburg, and to cease when unloaded from cars at the warehouse of the line. Drayage, 4 cents per bbl.

on flour; 6 cts. on pork; wool, feathers, cheese, dry hides, 50 cents per ton. All other articles

Dated at Cincinnati, this 28th day of March, 1854.

A. & B. Twelve hundred and four (1204) bbls pork.

PAUL & MURDOCK, *Ag'ts*
for GEORGE BINGHAM & CO.

Referred to by witness Lewis as "Exhibit *B* 6."

J. BIRNEY,
Com'r.

Exhibit D 1.

Memorandum of agreement between Henry Lewis and Roots & Coe for themselves, and as agents for Adams & Buckinghams, as follows: Said Henry Lewis, it is said, is in debt to said Roots & Coe for themselves, and as agents of Adams & Buckingham for reclamations or otherwise; and it is desirable that said Henry Lewis shall continue to ship said Roots & Coe, for themselves, and as such agents of Adams & Buckingham, such articles as may be thought will be profitable; and as heavy losses have been sustained by said Lewis, he cannot conveniently ship to said Roots & Coe for themselves, and as agents for Adams & Buckingham, unless arrangements are made to protect said Lewis and those who may assist him, so that the shipments to be made hereafter shall not be used to pay any existing debts, excepting as hereinafter mentioned, which is as follows:—

Said Roots & Coe for themselves, and as agents for Adams & Buckingham, shall dispose of shipments hereafter to be made to said Roots & Coe for themselves, and as agents for Adams and Buckingham, by said Lewis, to the best advantage, and for the proceeds of each of such shipments shall pay to said Lewis or order the full actual cost of the same, including amount paid for freight, &c., provided the proceeds of such shipments will amount to so much, and in that case one-half of the net profits accruing to said Lewis for such shipments, shall be credited to said Lewis on account of the debt said to be due said Roots & Coe for themselves, and as agents for Adams and Buckingham, and the other half shall remain subject to the order of said Lewis, provided that the amount of each shipment shall be kept separate under the above arrangement, and this arrangement shall continue for the term of one year from this date; and provided further, that in case Henry Lewis shall make consignments to said Roots & Coe for themselves, and as agent of Adams & Buckingham, and they shall decline to accept the bills that may be drawn against such consignments severally, then said Roots & Coe, for themselves and as agents of Adams & Buckingham, shall on demand transfer such consignments or consignment to said Lewis or his order, or to the holder of such bills so to be drawn as aforesaid.

CINCINNATI, *Nov.* 1, 1853.

The above is the paper referred to in the deposition of Henry Lewis as "Exhibit *D* 1."

J. B., *Com'r.*

Exhibit.

D. MACY & Co., Packers, Indianapolis, Ind.

INDIANAPOLIS, *March* 14, 1854.

Received of D. Macy & Co. in apparent good order, to be transported on the M. In. R. R., the under named articles, marked as per margin, which we promise to deliver without unnecessary delay, in like good order, subject to the agreement now made and hereinafter expressed, for Roots & Coe at the regular station at St. Bt. landing, Cincinnati, on payment of freight as per tariff of the company, and presentation of this receipt without alteration or erasure.

It is agreed, and is part of the consideration of this contract, that the railroad company is not to be responsible for leakage, fire (except from locomotives in transportation), unavoidable accidents, or any cause whatever, unless the same be shown to have accrued by the fraud or gross negligence of ourselves, our agents or servants; and that the liability of said company shall cease after the delivery of said articles at the station named, as to any burglary, robbery, theft, loss or damage of said goods, unless any such burglary, robbery or theft shall be proven to have been the act of some agent or servant of said company, connected with such station, or having access thereto.

It is further stipulated, that no liability shall attach to the company for losses or damages not apparent on delivery, unless the same be claimed and specified within ten days from the date of this receipt; nor for apparent damages, unless the same be claimed and specified before the articles are taken from the place of delivery. All hollow-ware, stoves and castings are shipped at the owner's risk solely as to breakage. Contents of stoves packed therein are not receipted for as to number of pieces or description.

Marks.	Packages.	Articles.	Weight.
On the 11th,	6 cars,	1100 pieces sides, 43 hhds. hams.	38,500 lbs.
On the 13th,	7 cars,	3080 pieces sides,	107,800 lbs.
On the 14th,	5 cars,	2200 pieces sides,	77,000 lbs.

At freight of $3 per ton, and $1 50 per hhd. Bulk sides shipped at shipper's count.

H. W. KEEHNER,
per MORLEY.

Exhibit.

Indianapolis and Cincinnati Railroad *via* Lawrenceburg.

INDIANAPOLIS, *March* 1854.

Received of D. Macy & Co. in apparent good order, to be transported on the Lawrenceburg and Cincinnati Railroad, the under named articles, marked as per margin, which we promise to deliver without unnecessary delay, in like good order, subject to the agreement now made and hereinafter expressed, for Roots & Coe, at the regular St. Bt. Landing in Cincinnati, on payment of freight, and presentation of this receipt without alteration or erasure.

It is agreed, and is part of the consideration of this contract, that the railroad company is not to be responsible for leakage, fire (except from locomotive transportation), unavoidable accidents, or any cause whatever, unless the same be shown to have occurred by the fraud or gross negligence of ourselves, our agents or servants; and that the liability of said company shall cease after the delivery of said articles at the station named, as to any burglary, robbery, theft, loss or damage of said goods, unless any such burglary, robbery or theft shall be proven to be act of some agent or servant of said company, connected with such station, or having access thereto. It is further stipulated that no liability shall attach to the company for losses or damages not apparent on delivery, unless the same be claimed and specified within ten days from the date of this receipt; nor for apparent damages, unless the same be claimed and specified before the articles are taken from the place of delivery. All hollow-ware, stoves and castings are shipped at the owner's risk solely as to breakage. Contents of stoves packed therein are not receipted for as to number of pieces or description.

Mark.	Description of articles.	Weight.
On the 3d inst.	10 cars, 140 hhds. hams.	
On the 6th inst.	7 cars, 2,204 pieces sides. 18 hhds. hams.	77,000 lbs.
On the 7th inst.	5 cars, 2,163 pieces sides.	75,705 lbs.
	freight $1 50 per hhd.	
	$3 per ton for bulk meat.	

W. W. CHAMBERS,
for I. and C. R. R. Co.

Exhibit E 2.

Shipped in good order and well conditioned, by Roots & Coe, per Little Miami Railroad Co., the following articles, marked and numbered as below, which are to be delivered, without delay, in like good order, at the port of New York (the unavoidable dangers only excepted), unto Adams & Buckinghams, or assigns, he or they paying

freight for said goods at the rate of 62 cents through per Dunkirk and Erie Railroad. In witness whereof, the agent or clerk of said Co. has affirmed to 4 bills of lading of this tenor and date, one of which being accomplished, the others to stand void. Dated at Cincinnati, this 6th day of June, 1854.

Marks.	Articles.	Weights.
A. & B., for Adams & Buckinghams, New York.	100 trs. hams.	34,280

E. LEGRAS.

Exhibit.

Received in good order and well conditioned of Roots & Coe, by L. M. R. R. Co., the following articles, mentioned as below, which are to be delivered without delay, in like good order and condition, at the port of New York (the unavoidable dangers only excepted), unto Adams & Buckinghams, or assigns, he or they paying freight for the said goods at the rate of 62 cents per 100 pounds through, via Dunkirk and Erie Railroad. In witness whereof the agent or clerk hath affirmed to 4 bills of lading of this tenor and date, one of which being accomplished, the others to stand void. Dated at Cincinnati, this 19th day of June, 1854.

Marks.	Articles.	Weights.
A. & B., for Adams & Buckinghams, New York.	100 trs. hams.	34,269 lbs.

J. E. GIBBONS.

Exhibit E 1.

Shipped in good order and well conditioned, by Roots & Coe, on board the good steamboat Telegraph, No. 3, the following articles, marked and numbered as below, which are to be delivered without delay in like good order at the port of St. Louis (the unavoidable dangers of the river and fire only excepted), unto Townsend, Robinson & Co., or assigns, he or they paying freight for the said goods at the rate of fifty cents per 100 lbs., privilege of reshipping. In witness whereof the owner, master, or clerk of said boat has affirmed to 4 bills of lading, of this tenor and date, one of which being accomplished, the others to stand void. Dated at Cincinnati, this 20th day of June, 1854.

Marks.	Articles.	Weights.
Townsend, Robinson & Co., St. Louis, Mo.	2 bales sacks.	600 lbs.

PYNGLN, *Clerk.*

UNITED STATES OF AMERICA,
State of Ohio, Hamilton Co., set.

I, James Birney, a commissioner resident in the city of Cincinnati, duly commissioned and qualified by the executive authority and under the laws of the State of Maryland to take and certify depositions, &c. to be used or recorded therein, &c., and by virtue of the agreement and commission from the Circuit Court of the United States in and for the Fourth Circuit and District of Maryland hereto annexed, do hereby certify that on the thirtieth day of January, A. D. 1855, at the Law-office of said James Birney, in the city of Cincinnati, in said County of Hamilton, and State of Ohio, being the time and place specified in the caption of said depositions, and at the same place, on divers other days, between that day and the tenth day of August, A. D. 1855 (which said several days were appointed, and the noting of which in these depositions was waived by consent of both parties, or their attorneys), personally came the above-named John H. Aydelott, Stanley Matthews, Henry Nye, George W. Trowbridge, John A. Shaw, and Thomas N. Shays (the said John H. Aydelott having been twice called and examined), as witnesses on the part of the plaintiffs; also Nathaniel Prentiss, Edmund B. Townsend, Henry Lewis (said Townsend and said Lewis being twice called and examined respectively), James McWhinney, and Wallace Siegerson, as witnesses on the part of the defendants, who, after being severally carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause above named in the caption to these depositions, did respectively, and each for himself, in my presence subscribe the foregoing depositions after the same were reduced to writing by me, except the depositions of Stanley, Matthews, and Edmund B. Townsend, which were reduced to writing by each of said witnesses respectively in his own proper hand; that I am not of counsel or attorney to either of the parties in the cause aforesaid, or in any manner whatsoever interested in the event thereof; that said depositions were taken on interrogatories written out either by the counsel of the respective parties, or by me at the dictation of said counsel at the time of taking the same; that due notice of the time of taking said depositions, and of the place thereof, was given to the counsel of the respective parties retained in Cincinnati, Ohio; that the said John H. Aydelott, Stanley Matthews, Henry Nye, George W. Trowbridge, John A. Shaw, Thomas N. Shays, Nathaniel Prentiss, Edmund B. Townsend, Henry Lewis, James McWhinney, and Wallace Siegerson (and each of them), reside and live at a greater distance than one hundred miles from the place of the trial of said cause; that said parties in person, or by attorneys, were present during all the time of the taking of said depositions.

William S. Scarborough, Esq., attorney for plaintiffs.
Thomas M. Key, Esq., attorney for defendants.

All which is certified by me at Cincinnati, in the County of Hamilton, and State of Ohio, on this tenth day of August, A. D. 1855.

[SEAL.] Witness my hand and seal of office.

JAMES BIRNEY.

Whereupon the plaintiffs recalled the said witness Aydelotte, who proved that he has heard the depositions of the witness Townsend read, and it is not correct, in so far as it differs from the evidence given by this witness; that he is positive and clear in his recollection, and that the facts above stated by him are as stated: That when witness first went to Lewis's pork-house, it was to get the weights of the meats sold to defendants, and he could not make out the bill until he had procured the weights, and this he thinks occurred on the 24th June, 1854, and he was instructed to ask Mr. M'Cullogh for the money for the purchase; which he did, as he has above stated, and that the conversation as stated by Townsend, did not take place, nor did he at any time hear M'Cullogh say that he did not know Roots & Coe in the transaction. That the first interview witness had no bill, and had not the means of making one out before he went there, as he had not the weights of the meats, which weights he obtained from Townsend; that he was returning home after going to several other places, he met Mr. Roots at Mr. Rowe's banking house. Townsend was either in, or witness met him going into said house. Mr. Roots asked witness whether he had made out a bill for Mr. M'Cullogh, and witness told him he had not. Mr. Roots then requested witness to make out a bill and present it to Mr. M'Cullogh, which he did make out in said bank at the teller's desk, and immediately returned and presented to Mr. M'Cullogh, and the second conversation took place as he has above stated. Mr. Townsend was not present at all during this conversation, and witness after leaving M'Cullogh met Townsend returning to Lewis's pork-house.

The plaintiffs further offered in evidence the following agreement:—

Agreement as to investment of money.

GURNSEY Y. ROOTS and ERASTUS P. COE

vs.

JOHN MCCULLOUGH and CYRUS D. CULBERTSON.

IN CIRCUIT COURT U. S.,
District of Maryland..

It is agreed in this cause that the suit shall be docketted in the Circuit Court U. S. for the Maryland District, and that the defendants shall deposit with Alonzo Lilly the sum of three thousand two hundred and twenty-one dollars and three cents, which shall abide the termination of the suit: If the plaintiffs recover, Mr. Lilly shall at once pay over to the plaintiffs or their attorneys the said

sum with six per cent. interest from this date; and if the plaintiffs fail in said suit, the said sum and interest shall be paid unto the defendants or their attorneys. It is understood that the plaintiffs claim in this (for one hundred tierces of hams heretofore bought by the defendants) the sum of twenty-nine hundred and eighteen dollars and fifty-eight cents, with interest and exchange in addition to the first mentioned sum, said first mentioned sum being the liquidated value of one hundred and twelve other tierces of hams.

BALTO., *July 6th*, 1854.

DOBBIN & TALBOTT *for P'tffs*,
WM. SCHLEY *for Defend'ts.*

BALTIMORE, *July 6th*, 1854.

Received this day, by the check of M'Cullough and Culbertson, the within mentioned sum of three thousand two hundred and twenty-one dollars and three cents, on the terms specified in the within agreement.

ALONZO LILLY.

The plaintiffs here closed their case. It was admitted that the defendants had sent for the witness Townsend to be present at this trial, but that he was unable to come because of a death in his family.

The plaintiffs by their counsel then offered the following prayer:—

Plaintiffs' Prayer.

The plaintiffs pray the Court, &c.

If the jury shall find that the plaintiffs had made advances on the goods in question, and that the defendants afterwards bought the said goods from the plaintiffs and Henry Lewis, or either of them, and agreed to pay the price of them to the plaintiffs; and if they shall find that the plaintiffs were to be compensated by a commission on the sale of the same, then the plaintiffs are entitled to recover; notwithstanding the jury *the jury* shall also find that in making said advances the plaintiffs acted as the agents of Adams and Buckingham.

And the defendants by their counsel also offered the following prayers:—

Defendants' Prayers.

The defendants, by their counsel, pray the Court to instruct the jury as follows:—

1. That by the terms of the receipt of Samuel Lewis, offered in evidence in this case, bearing date the 4th day of April, 1854, the 415 hhds. of hams therein mentioned as received by said S. Lewis, in store of Henry Lewis, and subject to the order of Roots & Coe, were to be delivered to said Roots & Coe, on the surrender, at the time of such delivery, of the former warehouse receipts, given by said Samuel Lewis, as specified in said receipt, dated 4th April, 1854.

2. That if the jury shall find, from the evidence in the cause, that the remainder of the 415 hogsheads of hams, not previously delivered, mentioned in said warehouse receipt, bearing date the 4th day of April, 1854, were offered to be delivered to said Roots & Coe, on the 2d day of May, 1854, on the surrender of the former warehouse receipt of said Samuel Lewis, mentioned in said receipt of the said Samuel Lewis, dated the 4th day of April, 1854, and that said Roots & Coe then and there refused to give up said former warehouse receipts, and have thenceforth hitherto delivered the same, or offered to deliver the same, then the said Roots & Coe were not entitled to a delivery of the said remainder of the said 415 hogsheads of hams at the time of the sale of the 212 tierces of hams, spoken of by the witness Townsend, as sold in June, 1854, by Henry Lewis, to the defendants.

3. If the jury shall find, from the evidence in the cause, that the former warehouse receipts of Samuel Lewis, specified in the said warehouse receipt, dated the 4th day of June, 1854, have not been given up by said Roots & Coe, and have not been offered to be given up by said Roots & Coe, or by the person or persons holding the same, then the said Roots & Coe were not entitled to the possession of the 212 tierces of hams, spoken of by the witness, Henry Lewis, as sold by him to the defendants, either at the time of such sale, or at the time of the comment of this suit.

4. If the jury shall find, from the evidence in the cause, that the 212 tierces of hams were, in fact, sold by said Henry Lewis to the defendants, and that they were not, in fact, sold to the defendants by the plaintiffs, and shall further find, from the evidence in the cause, that prior to such sale by the said Henry Lewis, an agreement had been made between the plaintiffs and said Henry Lewis, that the latter should dispose of the said hams, and account for the same to the plaintiffs at the rate of $7\frac{1}{2}$ cents per pound, then the plaintiffs are not entitled in this suit to recover the price of said 212 tierces, so sold to the defendants.

5. If the jury shall find, from the evidence in the cause, that the advances made on said 415 hogsheads were made exclusively by said Adams & Buckingham, mentioned in the agreement signed by Henry Lewis, dated 4th April, 1854, marked exhibit *B*, and were not made to any extent by the plaintiffs, then the plaintiffs are not entitled to recover in this suit, unless the jury shall find from the evidence in the cause, that the contract sale was made with the defendants by the said plaintiffs, as the vendors of the 212 tierces of hams.

6. If the jury shall find from the evidence in the cause, that the said 212 tierces of hams were in fact sold to the said defendants by the said Henry Lewis, and that it was parcel of the agreement between said Henry Lewis at or before the delivery of said tierces, that the defendants should not, and would not, pay the price or any part of the price to said plaintiffs, except on the order of said Henry Lewis, then the said plaintiffs are not entitled to recover the price

of said 212 tierces, unless the jury shall find from the evidence, that said tierces were the exclusive property of the said plaintiffs.

7. That even if the jury shall find, from the evidence in the cause, that the plaintiffs have made advances in money or otherwise to any amount upon said 212 tierces of hams, and even if they shall further find that as between the plaintiffs and said Adams & Buckingham, the plaintiffs had an interest in said sale to the extent of 1½ per cent., and shall also find that plaintiffs had no further or other interest in said 212 tierces, then the plaintiffs are not entitled to recover in this suit any larger sum than their said advances and commissions, and interest thereon.

8. That the plaintiffs cannot recover the price of the said 212 tierces of hams spoken of by the witness Henry Lewis, as sold by him to the defendants, unless the jury shall find from the evidence in the cause, that the contract was really made by the plaintiffs with the defendants, or, unless the jury shall find from the evidence in the cause, that the plaintiffs had before or at the time of the institution of this suit, an immediate right of possession to the said 212 tierces, as against said Henry Lewis, and also against the defendants, and also against said Adams & Buckingham.

9. If the jury shall find from the evidence in the cause, that the 415 hogsheads mentioned in the receipt signed by Samuel Lewis, bearing date the 4th day of April, 1854, and marked Exhibit *A*, were, at the time said receipts was given, actually existing and in possession in the store of said Henry Lewis; but shall also find that the said hogsheads did not contain, each, the sum of 900 pounds *net*, but really contained, each, a much less quantity, then the said Samuel Lewis, under the said receipt, was not responsible for the delivery of any greater number of pounds than were really contained in said 415 hhds., and that the hams deliverable under the said receipt, were the identical hams so contained in said 415 hogsheads, and not other or divers. And if the jury shall further find, that hams were delivered under said receipt in part to said Adams & Buckingham, and in part to the plaintiffs as their agents, and that payments in money were made to said plaintiffs for or on account of other of said hams, and that said money was paid and received in lieu of such other hams, and in place of the delivery of such other hams; and shall also find that the hams actually delivered as aforesaid under said receipt, and the said other hams, in lieu of the delivery of which money was received as aforesaid, made together the full quantity of hams delivered under said receipt, exclusive of any of the hams contained in said 212 tierces, then the plaintiffs are not entitled to recover the price for which the said 212 tierces were sold as aforesaid to the defendants.

10. If the jury shall not find from the evidence in the cause, that the hams actually delivered under said receipt specified in the 9th prayer, and the other hams mentioned in the hypothesis of that prayer as hams in lieu of the delivery of which money was received, made together the full quantity of hams, deliverable under said re-

ceipt, exclusive of any of the hams contained in said 212 tierces; but shall find all the other facts mentioned in said 9th prayer as the hypothesis of that prayer; and shall also find that some of the hams contained in said 415 hogsheads were sold to Albert Lewis, and that some were sold to Mr. Ewing, and some to other persons, and shall find from the evidence that the hams actually delivered under said receipt, and the other hams in lieu of the delivery of which money was received, and the hams so sold to said Albert Lewis, and those sold to Mr. Ewing, and the hams sold to other persons, exclusive of the hams contained in the 212 tierces, together made up the full quantity of hams deliverable under said receipt of any of the hams contained in said 212 tierces, then the plaintiffs are not entitled to recover the price of the said 212 tierces sold to the defendants.

11. Unless the jury shall find from the evidence in the cause, that the hams, contained in the 211 tierces, were parcel of the hams contained in the 415 hogsheads (in case the jury shall find from the evidence that the said 415 hogsheads actually existed at the time said receipt was given, and were in store of said Henry Lewis), the plaintiffs are not entitled to recover.

12. If the jury shall find from the evidence in the cause, that at the time the said receipt, dated 4 April, 1854, was given by said Samuel Lewis, the 415 hogsheads therein stated as received in store of Henry Lewis were not in fact so received, then the plaintiffs did not, by virtue of said receipt, acquire any interest in the specified hams contained in the 212 tierces sold to the defendants; and if the jury shall further find that said 211 tierces were sold to the defendants by Henry Lewis, and not by the plaintiff, then the plaintiffs are not entitled to recover in this suit.

13. That if the jury shall find that the sale to the defendants was in fact made by Henry Lewis, and was not made by the plaintiffs, or either of them; and shall further find that the plaintiffs were not entitled to the immediate possession of said hams, in said 212 tierces, or any part of them, at or before the commencement of this suit, and that they were not the owners of the said hams, or any of them; and shall further find that the defendants, at the time of the commencement of this suit, had not received money for the said tierces, or any of the hams contained therein, then the plaintiffs are not entitled to recover in this suit.

But the Court refused all the said prayers, and gave the following instructions:—

Court's Instructions.

If the jury shall find from the evidence in this case, that the said 212 tierces were part of the hams contained in the 415 hogsheads mentioned in the receipt of April 4, 1854; that they were sold by the said plaintiffs in their own name to the said defendants; that at the time of the said sale the said hams belonged to the said plaintiffs, or that they had an interest in the same for advances or commissions,

and authority as the agents of Adams & Buckingham to dispose of the same; and that said hams were delivered to and received by said defendants in pursuance of said sale, then the plaintiffs are entitled to recover the full amount or price of the said hams.

2. That although the jury may find from the evidence that the said hams were sold to defendants by Henry Lewis, yet if they also find that at the date of said sale the said hams belonged to plaintiffs, or to Adams & Buckingham, for whom the plaintiffs acted as agents, and if the latter, that the plaintiffs had an interest in and control over the said hams to cover advances and commissions; that defendants subsequently promised to pay plaintiffs the same, and that this suit was instituted before the price of said hams had been paid by defendants to Henry Lewis, then and in that event the plaintiffs are entitled to recover.

The defendants thereupon by their counsel prayed leave to except to the refusal of the Court to grant the said several prayers respectively of the said defendants, and also prayed leave to except to both and each of the instructions given by the Court, and that the Court would sign and seal this bill of exceptions, which is accordingly done this 20th day of November, 1855.

WILLIAM F. GILES. [SEAL.]

After the above instructions had been given, and exception had been taken as above, the defendants, by their counsel, further prayed the Court to instruct the jury as follows:—

Defendants' Prayer.

After the instructions had been given by the Court the defendants prayed the Court to give the following instruction:—

If the jury shall find, from the evidence in the cause, that Samuel Lewis took no part, in fact, in the sale and delivery of the 212 tierces of hams, and had no knowledge thereof, and did not assent thereto, and should further find that Samuel Lewis had not, in any manner, authorized Henry Lewis to deliver the 212 tierces to the plaintiffs, or to Adams & Buckingham, or to the use of either, without the giving up of his former warehouse receipts, and shall further find that Henry Lewis himself made the sale to the defendants, and delivered, in pursuance of said such sale, the 212 tierces, and that in making such sale and such delivery he did not profess or intend to deliver the same to the use of the plaintiffs, or as their agent, or to waive, in any manner, the condition as to the surrender of the former warehouse receipts of Samuel Lewis mentioned in paper A, then the jury ought not to find that there was any waiver by Samuel Lewis of the condition expressed in said paper A, as to the giving up of his said former warehouse receipts.

But the Court refused to grant said prayer, and rejected the same. To which said refusal of the Court of said last mentioned prayer, the defendants, by their counsel, prayed leave to except, and that the Court would signed and seal this their second bill of exceptions, according to the form of the statute in such case made and provided, and which is accordingly done this 20th day of November, 1855.

WILLIAM F. GILES. [SEAL.]

And now here at this day, to wit, the twentieth day of November, in the year of our Lord one thousand eight hundred and fifty-five, the said John McCullough and Cyrus D. Culbertson produced to the said Circuit Court here the writ of the said United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States to be held at the city of Washington, on the first Monday in December next, which said writ of error is in the words and of the tenor following, to wit:—

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Judges of the Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, greeting:—

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, between Gurnsey Y. Roots and Erastus P. Coe, plaintiffs, and John McCullough and Cyrus D. Culbertson, defendants, a manifest error hath happened, to the great damage of the said John McCullough and Cyrus D. Culbertson, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done. Witness the Honorable R. B. Taney, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-four.

[SEAL.] THO. SPICER,
Cl'k Cir. Ct.

In pursuance whereof, and according to the form and effect of the Act of Congress in such case made and provided, the transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

Writ of Error Bond.

Know all men by these presents, that we, John McCullough, Cyrus D. Culbertson, Henry W. Krebs, and James Gittings, of the city and county of Baltimore, in the District of Maryland, are held and firmly bound unto Gurnsey Y. Roots and Erastus P. Coe, citizens of the State of Ohio, in the just and full sum of fourteen thousand dollars, lawful money of the United States, to be paid to the said Gurnsey Y. Roots and Erastus P. Coe, their heirs, executors, administrators, or assigns, to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twenty-second day of November, in the year of our Lord one thousand eight hundred and fifty-five.

Whereas, at a Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, begun and held at the city of Baltimore, on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-five, the said Gurnsey Y. Roots and Erastus P. Coe, by the judgment of the same Court, recovered, against the said John McCullough and Cyrus D. Culbertson, the sum of six thousand seven hundred and forty-five dollars and seventy-nine cents, together with their costs and charges by them about their suit in that behalf laid out and expended: And whereas, the said John McCullough and Cyrus D. Culbertson have sued out the writ of the United States of America for the correcting of errors, and a citation directed to the said Gurnsey Y. Roots and Erastus P. Coe, citing and admonishing them to be and appear at a Supreme Court of the United States, to show cause, if any there be, why the judgment so as aforesaid rendered, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties aforesaid in that behalf:

Now the condition of the above obligation is such, that if the said John McCullough and Cyrus D. Culbertson shall well and truly prosecute with effect their said writ of error, and pay unto the said Gurnsey Y. Roots and Erastus P. Coe, their heirs, executors, administrators, or assigns, the amount of the said judgment of the said Circuit Court, and also all such damages, costs, and charges, as may be awarded unto them by the said Supreme Court in case they, the said John McCullough and Cyrus D. Culbertson, shall fail to make good

their said plea, then the above obligation to be void and of none effect, otherwise to be and remain in full force and virtue in law.

JOHN McCULLOUGH, [SEAL.]
CYRUS D. CULBERTSON, [SEAL.]
HENRY W. KREBS, [SEAL.]
JAMES GITTINGS. [SEAL.]

Signed, sealed, and delivered in presence of
SAM'L P. WILLIAMS.

We agree to take this bond, to be stamped, if necessary.
DOBBIN & TALBOTT,
for Plt'ffs.

Nov. 28th, 1855. Approved:
R. B. TANEY.

THE UNITED STATES OF AMERICA,

To Gurnsey Y. Roots and Erastus P. Coe, greeting:—

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at the city of Washington, on the first Monday in December next, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Fourth Circuit in and for the Maryland District, wherein John McCullough and Cyrus D. Culbertson are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said John McCullough and Cyrus D. Culbertson, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand, this 28th day of November, in the year of our Lord one thousand eight hundred and fifty-five.
R. B. TANEY.

Notice of the above citation acknowledged.
DOBBIN & TALBOTT,
Attorneys for Roots & Coe.

BALTIMORE, *Jan'y* 22, 1856.

In testimony that the aforegoing is a true copy, taken from the record and proceedings of the Circuit Court aforesaid—

[SEAL.] I hereunto subscribe my name, and affix the seal of the said Circuit Court, this twenty-second day of January, in the year of our Lord one thousand eight hundred and fifty-six.
THO. SPICER,
Cl'k Circ't Ct.

Filed 13 May, 1856.